(26,451)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 984.

R. A. FLANDERS, AS TRUSTEE OF M. C. COLEMAN, APPELLANT,

vs.

E. J. COLEMAN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

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1 In the United States District Court, Eastern Division, Southern District of Georgia.

In Equity.

R. A. FLANDERS, as Trustee of M. C. Coleman, Bankrupt,

vs.

E. J. COLEMAN.

To the Honorable the Judges of the United States District Court for the Southern District of Georgia:

Your Complainant, R. A. Flanders, as trustee in bankruptcy of M. C. Coleman, Bankrupt, brings this his bill of complaint and shows:

First.

That M. C. Coleman, filed voluntary bankruptcy proceedings in this honorable court on May 8th, 1915, on which date he was duly adjudicated bankrupt, within the intent and meaning of the laws of Congress relating to Bankruptcy.

Second.

On the fourth day of June A. D., 1915, your complainant was duly elected trustee of said bankrupt's estate, and his bond as such trustee was duly approved and filed on June 5th, A. D., 1915, and your complainant is now the duly qualified and acting trustee of said bankrupt's estate.

Third.

E. J. Coleman, is a citizen of the United States, residing in or near the town of Swainsboro, in the County of Emanuel, in the Eastern Division of the Southern District of Georgia.

Fourth.

That the jurisdiction of this court is invoked under the sections, 60*b*, 67*e* and 70*e*, of the laws of Congress as amended, relating to Bankruptcy, and the general equity powers of this court.

Fifth.

Your complainant shows that in about the year A. D., 1902, the said M. C. Coleman married, and that the said E. J. Coleman the

father of the said M. C. Coleman at or before that time, owned a tract of land hereinafter more fully described, containing
2 Three Hundred and Seventy-seven acres more or less, being in the 395th G. M. District of Emanuel County, Georgia, and the said E. J. Coleman placed his said son M. C. Coleman in possession of the said land, expressing his intention then and there to give the said land to his said son. That the said land was not cleared land at that time, and the said M. C. Coleman cleared the said land, moved on the same and lived on the said land exercising dominion of the same exclusively for at least twelve years, and placed on the said land valuable improvements, hereinafter more fully described.

Sixth.

That *on* or about the month of ——, 1913, the said M. C. Coleman bought a place known as the Rowan Durden place, and moved on the same. The said M. C. Coleman rented as landlord the said Three Hundred and seventy-seven acres of land which your Complainant charges had been given him by said E. J. Coleman to Dan Davis, Esq., for five years, the said rent notes for the same being taken in the name of said M. C. Coleman, and being payable as follows, $1000.00 payable October 1st, 1914, $1000.00, October 1st, 1915, $1000.00 payable October 1st, 1916, and $1000.00 payable October 1st, 1917, and $1000.00 payable October 1st, 1918. Your orator charges that the said M. C. Coleman collected the said note maturing October 1st, 1914, and that he, the said M. C. Coleman, on December 1st, 1914, and ever since that date to the filing of the petition in this cause was insolvent within the meaning and intent of the laws of Congress relating to bankruptcy.

Seventh.

Your orator further shows, that in the month of January or February A. D., 1915, the said M. C. Coleman, while insolvent within the meaning of the laws of Congress relating to bankruptcy turned over to the said E. J. Coleman, four of the said rent notes, of the value of Four Thousand Dollars, with intent to hinder, delay and defraud his creditors, there being no consideration for the said transfer, and if there was any such consideration, the same was largely less than the then value of the said rent notes.

Eighth.

3 Your complainant further shows that if the said conveyance of the said rent notes was not made with a purpose and intent to hinder, delay and defraud creditors, the said transfer and the effect of the same under the laws of Congress relating to bankruptcy was to create a preference in favor of the said E. J. Coleman, for that the said transfer was made while the said M. C. Coleman was insolvent, and the effect of the enforcement of the same will be

to enable the said E. J. Coleman to obtain a greater percentage of any indebtedness claimed to be owing to him by the said M. C. Coleman, than any other of such creditors of M. C. Coleman, of the same class. And at the time of the said transfer of the said rent notes, made within four months of the filing of the said bankruptcy petition, the bankrupt was insolvent and the said transfer operated as a preference, and the said E. J. Coleman at the time of receiving the said transfer of the said four rent notes, then had reasonable cause to believe that the enforcement of the said transfer would effect a preference, and the said transfer was void, and it is your petitioner's duty to recover the same or the proceeds thereof.

Ninth.

Your orator further shows, that the said M. C. Coleman, up to December 1st, 1914, had a good title to the said Three Hundred and seventy-seven acres of land, more or less, which is described as that certain tract of land known as the M. C. Coleman, place, bounded on the North by E. E. Coleman, East by F. M. and Geo. Stewart, South by N. L. Gillis, and West by John W. Gillis estate, and being in the 395th G. M. District of Emanuel County, Georgia. That although it does not appear that a deed had ever been delivered by the said E. J. Coleman to the said M. C. Coleman, for the said place, the said E. J. Coleman placed the said M. C. Coleman, in possession of the said land with intention to give the same to him, and the said M. C. Coleman held exclusive possession of the said land as his own, and made bona fide improvements on the said land of great value, and dealt with the said land as his own and as an asset of his own, for the purpose of obtaining credit, and from the said long possession so held, the said title to the said land became vested in the said M. C. Coleman, and at the time of the transfer of the said
4 rent notes to E. J. Coleman the legal title, or right to the said land was completely vested in the said M. C. Coleman as if he had obtained a deed from the said E. J. Coleman. That the said M. C. Coleman made the following valuable improvements on the said land during the time he occupied the same, as his own property, to-wit, clearing land for a ten horse farm, of about two hundred and twenty acres, reasonably worth $1,400.00..... $1,400.00
Four miles of wire fencing and putting up the same,.... $700.00
One six room dwelling, four stalls, barns, and cribbs, buggy house, cotton house, smoke house,..... $1,500.00
One two room frame house, brick chimney, one lot, crib, shelters and smoke house,..... $500.00
One four room frame house and kitchen, brick chimneys, 2 barns, stall, shelter, smoke house,..... $600.00
One four room frame house, kitchen brick chimney, smoke house, 2 barns, four stalls,..... $600.00
One four room frame house, brick chimneys, smoke house, barn and stalls,..... $500.00
One four room frame house, two brick chimneys, smoke house, barn, 2 stalls and shelter,..... $600.00

The said improvements being reasonably worth at the time of the making of the same, and having added a value to the said land of at least sixty four hundred dollars ($6,400.00).

That the said land and the improvements thereon are reasonably worth the sum of Twelve thousand dollars.

Your orator shows that the said E. J. Coleman claims that the said M. C. Coleman and his trustee in bankruptcy have no interest or claims in the said land and improvements. He claims that he has the right to hold and collect the said rent notes, and also to resist the right of your complainant to the said land and to the value of the improvements thereon.

Your orator shows that it is unjust and inequitable under any circumstances for the said E. J. Coleman to withhold the said land and improvements and the said rent notes from your petitioner as such trustee for said M. C. Coleman. That the said land and improvements are the property and assets of the said M. C. Coleman, and should be administered to pay his debts, and the said rent notes or the proceeds of the same should be recovered by your petitioner for the purpose of administering the same in this cause.

Tenth.

Your orator shows that the said M. C. Coleman's assets have (except as to the property herein sought to be recovered), been administered and the same have not realized more than $2900.00, and there are debts in existence of at least Sixteen thousand dollars or more, in the form of claims against said bankrupt's estate, and that unless the said property herein sought to be recovered is recovered, that the assets administered will not be sufficient to pay the said debts of said bankrupt, and it is necessary to recover the said land and notes and the value of such notes, for that purpose.

Eleventh.

Your orator further shows that the said M. C. Coleman, by arranging or agreeing with the said E. J. Coleman to relinquish his rights and title to the said real estate and improvements, in the year 1915, did so with intent to hinder delay and defraud his creditors, and that such conduct on the part of said M. C. Coleman in yielding to any claim of right to said land to said E. J. Coleman, was and is a fraud on the creditors of said M. C. Coleman, for the said M. C. Coleman well knew that he owned the said land, had the title thereto by virtue of the gift from his father E. J. Coleman, and the expenditure of large sums of improving the same, and in exclusively occupying the said land in his own right for nearly twelve years, and the said property should be recovered for your petitioner to administer the same as such trustee.

Twelfth.

That your petitioner charges that under the facts set forth the said E. J. Coleman was under obligation to convey to the said M. C

Coleman the paper title to the said land, in performance of his agreement to convey the same to the said M. C. Coleman, and that the said E. J. Coleman should be required to specifically perform the said agreement by conveying the paper title to the said land to your petitioner as such trustee, should this court determine that it is necessary for the said paper title to be vested in your petitioner.

6 Thirteenth.

Your complainant further shows that he is without any adequate remedy at law, and it is necessary to invoke the equitable jurisdiction of this Court in the premises to enforce your petitioner's rights in the administration of the said real estate and improvements and the said personalty or the proceeds of same.

Wherefore, your petitioner waiving discovery and answer under oath, brings this his bill of complaint and prays:

1. That the Court declare the said transfer of the said four rent notes of the value of $4000.00 and interest to be void, as having been made with intent to hinder, delay and defraud the creditors of the said M. C. Coleman.

2. That the Court further decree that the said transfer of the said rent notes to E. J. Coleman be declared to be a preference, should the court hold or find that there was any indebtedness owing to the said E. J. Coleman by the said M. C. Coleman at the time of the said transfer, and that the said notes collected by the said E. J. Coleman be accounted for, or their proceeds with interest from the date of collection of same be recovered by your complainant, and that any of said notes that may not have been collected up to the time of final decree be decreed to be surrendered to your complainant, as an asset of said bankrupt's estate.

3. Your complainant further prays that the said Three Hundred and seventy-seven acres more or less, described in this bill of complaint be decreed by this court to be the property of your petitioner as such Trustee for the purposes of applying the same towards the payment of the creditors of said bankrupt's estate. And that the defendant, E. J. Coleman, be forever enjoined from claiming any rights in the same or asserting any claim of title to the same, and that he be required to make such conveyances or acquittances so that your petitioner as such trustee may have and hold the paper title of the said property for the purposes of said bankrupt's estate, and in order that the same may be sold by your petitioner as trustee and a good title to the same be conveyed.

7 4. That in the event this court should hold that the complainant should not have and receive the relief prayed for in the preceding paragraph, because of any defect in complainant's claim of title, that your complainant be declared as such trustee to have an equitable lien or charge on the said land, at least to the extent of the value of the said improvements thereon, and to the extent that the said M. C. Coleman has improved the said property, to-wit: at least $6800.00.

5. That the said respondent E. J. Coleman be required to specifically perform his promise and agreement based on meritorious consideration to give the paper title to the said land to the said M. C. Coleman, and that the said paper title be made in your petitioner's name as trustee, for the said M. C. Coleman for the benefit of the said creditors in bankruptcy of the said M. C. Coleman.

6. That your complainant have such other and further relief as to this court may seem meet and proper in the premises, and that all of the said conveyances, transfers and releases made by the said M. C. Coleman to the said E. J. Coleman be set aside.

7. That process of subpœna may issue directed to the said E. J. Coleman, requiring him to plead to this bill of complaint in terms of the law and in accordance with the rules of this Court in equity.

And your Complainant will ever pray, etc.,

SAUSSY & SAUSSY,
Counsel for Complainant, R. A. Flanders, Trustee.

Endorsement: Original Bill of Complaint. Filed in office Sep. 20, 1916. J. C. Morcock, Deputy Clerk.

8 In the United States District Court, Southern District of Georgia, Eastern Division.

In Equity.

R. A. FLANDERS, Trustee of M. C. Coleman, Bankrupt,

vs.

E. J. COLEMAN.

To the Honorable the Judges of said District Court:

The Complainant now comes and amends the eleventh paragraph of the said bill, and by adding at the end thereon, the following allegation:

That within the period of four months immediately preceding the filing of said bankruptcy proceedings by the said M. C. Coleman, to-wit: on or about January —, 1915, while insolvent, and with intent to hinder, delay and defraud his creditors, the said M. C. Coleman, who then held the title to the above described real estate, fraudulently disclaimed such title, and surrendered the possession and control of the said property and his title thereto, to the said E. J. Coleman, and thereby fraudulently transferred his rights, title, interest and equity in the said real estate to the said E. J. Coleman, contrary to the laws of Congress in such cases made and provided, and transferred said rent notes with the purpose and intent to make the tenant his tenant the tenant of said respondent and said tenant has attorned to said respondent.

WILLIAMS & BRADLEY,
SAUSSY & SAUSSY,
Counsel for Complainant.

Amendment allowed.
In open Court, December 9th, 1916.
W. W. LAMBDIN,
U. S. District Judge.

Endorsement: Amendment to Bill of Complaint. Filed December 9, 1916. J. C. Morcock, Deputy Clerk.

9 In the United States District Court, Eastern Division, Southern District of Georgia.

R. A. FLANDERS, Trustee for M. C. Coleman, Bankrupt,

vs.

E. J. COLEMAN.

Ejectment.

Answer of Defendant.

And now comes the defendant, E. J. Coleman, and makes answer to said bill as follows:

1.

Paragraph first of plaintiffs' petition is admitted.

2.

Paragraph second of plaintiffs' petition is admitted.

3.

Paragraph third of plaintiffs' petition is admitted.

4.

In answer to paragraph fourth of plaintiffs' petition, as to the jurisdiction of this court, this defendant denies the same. And, while a motion to dismiss has, by this court been overruled, still, respondent alleges that the facts as they appear, show that he has done no act, which places him under the law as set out in said paragraph, and that the only court with jurisdiction to try any issue relative to this question of gift or no gift of the property in question, is the Superior Court of his residence, Emanuel County, Georgia. Respondent would further say, that he cannot, only as above, deny or admit said paragraph, for want of sufficient information, and strict proof of the same is hereby demanded.

5.

Paragraph fifth of Plaintiffs' petition is denied; except that on or about the date mentioned therein, his son M. C. Coleman married

and that your respondent owned and now owns and has never parted with either directly or indirectly or otherwise, the title to the land in question, or to the full perfect complete ownership and dominion over the same as in fee simple since the day he purchased it.

10 Further answering said paragraph, this respondent would show that while possibly all of said land was in the wood, and was by the said M. C. Coleman, his son, cleared and improvements made thereon. This respondent would show that this was all under his supervision, exercising dominion over said land, recognized by his son, that in the use and enjoyment of said loan said improvements were necessary as well as the fact that it improved his property and made it more valuable.

6.

Respondent finds it impossible to answer paragraph sixth as a whole, either with denial or admission, nor can he either deny or admit, because it sets up different allegations; some of this defendant knows, and some he does not know. So in answer thereto, this respondent says that the allegations therein that in some month in 1913, M. C. Coleman moved on what is known as the Rowan Place is admitted, but as to his purchase of the same, respondent does not know, but for the purpose of this answer and this case, he will admit the same.

Your respondent further answering said paragraph sixth would say: That whether in renting said place to the said Dan Davis, the said M. C. Coleman, his son represented himself as landlord or not he will neither deny nor admit for want of sufficient information: That as to whether or not the said M. C. Coleman collected in October, 1914, the note for $1,000.00 your respondent has been so informed, therefore admits same. As to other notes, this respondent would say: that his son without any request from him, without a word having been said prior thereto in reference to the place, sent the four notes to him, when this respondent was not advised about his son's conditions. Your respondent received said notes believing them to be his, providing he ratified the said trade, which he knew he need not do unless he wished, but the said rental was a fair rental, and even if he had not been, he thought and believed that Davis acted in good faith and he would not out of respect for his son, have put Davis off.

The remainder of said paragraph is neither denied nor admitted for want of sufficient information, and if proof of same is

11 necessary strict proof is demanded.

Further answering, this respondent would say that if at any time said M. C. Coleman was insolvent, your respondent had no knowledge of the same directly or indirectly, said M. C. Coleman never talked to him in reference to his financial condition, or in reference to any bankruptcy, and he did not know of the same until it was done.

Your respondent further answering, would say: That in all this entire transaction he acted in perfect good faith, that the notes came to him as his, the land was his, there was no benefit of any kind

reserved to his son, and there was nothing done by him to change the status of the affair one way or the other, but that he acted in accordance with what was right, as he saw it, and as the property belonged to him.

7.

Paragraph seventh of plaintiffs' petition is denied, except as to the receiving of said rent notes, which has been partially, if not fully, explained in the sixth paragraph of this answer, which he hereby re-affirms.

8.

Paragraph eighth of plaintiffs' petition is denied.

9.

Paragraph ninth of plaintiffs' petition is denied. Further answering your respondent would show that some improvements were made on the land so that M. C. Coleman would enjoy the loan of said land, but said improvements were made at scarcely no cost to the said M. C. Coleman, but from the product of said land, together with what was advanced to the said M. C. Coleman by this defendant.

10.

Paragraph tenth of Plaintiffs' petition is neither denied nor admitted for want of sufficient information. If proof thereof be necessary, defendant demands strict proof.

11.

Paragraph eleventh of plaintiffs' petition is denied, except
12 as to the insolvency of the said M. C. Coleman, which is neither denied nor admitted for want of sufficient information. It is a matter which this respondent knew nothing in the world about. This respondent, however, admits that he collected the rent notes as they fell due, and he contends that under the law and the facts in this case he had a right to do so, because said land was his, therefore, said rent notes were his.

12.

Paragraph twelfth of plaintiffs' petition is denied.

13.

Paragraph thirteenth of plaintiffs' petition, being in the nature of a prayer, is neither denied nor admitted for want of sufficient information. But this respondent does deny the right of said petitioner to receive an affirmative answer to said prayer.

14.

Your respondent having answered said bill or petition by paragraphs, by way of further answering said petition, this defendant avers; alleges, charges, and will maintain and prove as true, that the title to all the property in said petition described is his, and has always been his since the date he purchased it, which was several years ago.

15.

Your respondent would further show that his son, M. C. Coleman, has never had any title to said property directly or indirectly, that the same has never been given to him at any time, nor were the improvements put thereon in consideration of any gift, nor has there anything been done by him, by which title could either in law or in equity pass out, or be decreed out of this respondent and into the son, under or by any of the rules of law governing a transaction of this kind. That this transaction was simply a loan of this real estate to his son, for his use in making a living thereon, and that this respondent has always exercised dominion over same, known to his son, M. C. Coleman, and that he has always acknowledged the title to this property, both the paper title and the real ownership, both in law and equity, in this respondent, and has never at any time, as far as this respondent knows and is advised and be-
13 lieves, set up any claim of right or title thereto, except a claim of loan under which he went into possession.

16.

Your respondent would show that it was his intention as each of his children became of age, or married, to put them in possession of land, not as a gift, or with any intention to give, that he did that in this case, for this son, M. C. Coleman, who knew this and has at all times recognized the title in respondent, and has never had any further or greater title than a loan; that he has never claimed any right, and in all dealings with said property, he has recognized the right and title and ownership in this respondent, not only the paper title, but the real title, both in law and equity, and fee simple.

17.

Respondent would further show that to have given this land to his son, M. C. Coleman, would have been a pleasure to him, that he so told him at the time he allowed him to go upon said land; that he also told M. C. Coleman his son, that he could not give same to him, and do the same by all his children, and that he expected to treat them all alike.

18.

Your respondent would further show that any improvements made on said land, were not made on the strength of any gift or any

intention of giving, all of which was well known to his son, M. C. Coleman, but said improvements were made so that his son could enjoy the loan, and use of said land, as without said improvements, the loan would not do his son any good.

19.

Respondent would further show that while said improvements were being made he advanced said M. C. Coleman different sums of money, and made no charge of same, and no demand for same. This respondent believed that a large portion of said money went towards paying for the improvements on the land in question, and increased the value thereof, to the interest of those, share and share alike, who would eventually receive his estate.

14 20.

Respondent would further show that the occupancy of said loan by his son originated in and continued to be a loan pure and simple. Respondent has at all times claimed and had dominion over the same, recognized by his son, and that his son has at all times disclaimed any right, title, or interest therein. Respondent paying the taxes thereon ever since he purchased same, giving said land in his own name, and with his other property, swearing to the return as the law provided.

Respondent having fully answered, prays to be discharged with his reasonable cost.

E. J. COLEMAN,
Respondent.

Postoffice address Attys., Swainsboro, Ga.

F. H. SAFFOLD,
ARTHUR JORDAN,
Attorneys for Respondent E. J. Coleman.

15 In the United States District Court, Eastern Division, Southern District of Georgia.

In Equity.

R. A. FLANDERS, Trustee of M. C. Coleman, Bankrupt,

vs.

E. J. COLEMAN.

GEORGIA,
Emanuel County:

Personally appeared E. J. Coleman, the defendant in the above stated case, and makes oath that the statements in the foregoing

answer made so far as they come within his own knowledge, are true, and so far as his information goes, he believes them to be true.

E. J. COLEMAN.

Sworn to and subscribed before me this the 20th day of December, 1916.

MOLLY WARNOCK,
Com. N. P. E. Co., Ga.

Endorsement: Answer. Filed in office this December 22, 1916. J. C. Morcock, Deputy Clerk.

16 In the United States District Court, Southern District of Georgia, Eastern Division.

In Equity.

R. A. FLANDERS, Trustee of M. C. Coleman, Bankrupt,

vs.

E. J. COLEMAN.

Condensed Statement of the Evidence for the Purposes of Appeal.

The following evidence and testimony was taken before Hon. George W. Owens, Special Master commencing on the 11th day of May, 1917.

The Complainant offered in evidence the following documentary evidence:

The Schedules of the Bankrupt under one cover, which shows that the bankrupt, M. C. Coleman, filed a voluntary petition for adjudication in Bankruptcy in the United States District Court Southern District of Georgia, on the 8th day of May, A. D. 1915, at 11 o'clock A. M. That these schedules show $16,003.08 of unsecured indebtedness owing by him to various creditors, some of them residing in Georgia, and other States of the United States, $995.00 of discounted bills which others were liable for, $1,837.01 accommodation paper, and $237.27 taxes and wage claims, and the schedules of assets listed property valued by the bankrupt at $6,871.33. The schedules show the bankrupt asked for a homestead in money of $1,600.00. E. J. Coleman is listed as one of the unsecured creditors, amount stated $2,100.00 year contracted, 1914.

The adjudication of M. C. Coleman, as a bankrupt dated May 8th, 1915.

All claims proven against M. C. Coleman bankrupt, were offered in evidence, showing aggregate of unsecured claims proven $12,000.-00 by many creditors residing in Georgia and other States of the United States.

17 JOHN E. YOUMANS, witness for the complainant testified as follows:

I am a creditor of the bankrupt, as security on a note. I endorsed his note. At the time I endorsed his note, M. C. Coleman, I think, was in possession of the land in dispute. The note was renewed two or three times. It was finally, $900.00 or $1000.00. The note was due to the Citizens Bank of Swainsboro. It is signed by me, the bankrupt M. C. Coleman, and J. L. Warren. That debt has not been paid. I paid half the note last fall, right after he went into receiver's hands. We have paid the balance. We paid $614.00 then and we have paid the balance. I cannot state positively when the first note was given, been five or six years ago, maybe longer; it has been running along.

This particular tract of land, was called among the people generally, the Stewart Place, according to my understanding. After M. C. Coleman went there, it became known as the M. C. Coleman place, he was on it. I cannot say definitely how long M. C. Coleman was in possession of this tract of land, but between 12 and 15 years he has been over there. When he first entered in possession of it, there was no improvements much there. I cannot say, what improvements, in a general way, that is, what amount of the land is now actually in cultivation compared with what was in cultivation when he went there. There was not very much in cultivation when he went there, but a big lot of it now in cultivation. I suppose 225 or 250 acres now in cultivation. There was a small amount in cultivation when he went there. I do not know the exact amount. I would think the value of this place as it now stands is thirty dollars per acre. It is an average land for that county, it is an average place. It is a pretty good piece of land, it is an average or above the average. It has a good wire fence on it; may be some little rail fence, but most of it wire fencing. Six settlements. I lived in about five miles of that place. I have been seeing the place for a long time. When M. C. Coleman entered into possession of that land in 1902 or 1903, it was worth five dollars per acre, or upwards. The outside price would be from five to ten dollars per acre. As the land now stands it is worth $30.00 per acre.

18 Q. What was the value of that tract of land on or about January 1915 which is the time when it has been testified the land was surrendered to the respondent, E. J. Coleman? Is there any difference between its value now and then?

A. I don't think so. It is worth Thirty dollars per acre at that time, which includes the improvements as it now stands. I have recently been over that tract of land to survey and value the improvements made on it. I only ran up the values roughly. I made four thousand one hundred dollars including wire fencing and buildings. I left off clearing of the land and putting it in cultivation. It costs about $3.00 per acre to take in land, clearing that way. I have had some experience in handling plantations and building up lands from wild lands into cultivated farms.

Q. To any extent?

A. Yes, right smart. I built up two or three places. My farm is about five miles from this place. And from my experience and knowledge of the cost and prices, in building up my place, and having built farm houses and had them built on my place. I went to the lower end of the plantation the other day, on this place in dispute the first house, rough estimate five rooms and improvements, I put at $500.00. I wanted to make it reasonable. Next is the wire fencing, the schedule here makes at least five miles of it. I put up five or six miles of wire myself, and it cost me $100.00 per mile. I put that wire fencing at $500.00 and then put up the posts and the wire and allowed him $100.00, making $600.00 for that. That is the way I valued that. The next place, house No. 2, Sidney Gun, and improvements. That small improvements $300.00 I am confident it cost that much. The next house, Number three, The Cox house and improvements, I put at $600.00. That is the one they told me Math built for his own use and lived in himself. I put that $600.00. The next one, the Alfred Brown house, four rooms and improvements, $600.00, and that was next one, the next was Fred Boom house, no Alfred Boom house. No. 5, and improvements, $300.00. That is another small place. Now No. 6 the last house is Dan Davis's house, six rooms and improvements and the improvements are good, good stable and barn, good house, and with the improvements, I put it at $1500.00 I think it is a low
19 estimate for the work that has been done. I did not estimate on the taking in the land and clearing it. I paid $2.00 per acre to get the logs and everything cleared, it cost me $1.25 to get it turned over, so a reasonable estimate is $3.00 per acre for clearing it up, the way it cost me.

I would say the value of these buildings and the cost of erecting them would have been them same in January, 1915, that they are at the present time, all these improvements.

At the time I signed this original note or any renewal thereof, he, M. C. Coleman came in the front office there one day with this note and asked me to sign it. Mr. Warren had done signed it, and he told me he needed some money for improving the place over the Ohoopee, and asked me if I would sign it with him. I told him——

Q. His place, what place did he refer to?

A. This place over there; that is all the place he had taken up over there, and lived there at that time. I am under the impression at that he was there, I am not positive, but that is what he told me, needed some money and would like to get some to do some improvements he was making over there on his place.

Q. Did he say what improvements he wanted to make?

A. Improve his place. He did not say what kind of improvements he was putting up, whether taking in land or building houses or what; he did not go on that far and say. I signed that note right then. Of course I signed the note on the faith of the statement made to me, I thought the place was his'n.

Cross-examination:

Those improvements were necessary to have improved it, before he could derive any benefit, to get it under good cultivation, to produce something. The improvements were necessary in order that the man in possession of it might receive some benefit from it in some way; couldn't get anything in the shape it was in. I cannot state the date of the first note, it has been running several years. We renewed it three or four times. I am not certain, when the year would run out, he would come back and renew it. At the time I signed these renewal notes, some three or four times I
20 spoke of, the bankrupt, M. C. Coleman was on the same tract of land all this time.

The Citizens Bank of Swainsboro, according to the original proof of claim submitted to me, has proven claim against bankrupt, M. C. Coleman on two executions one of them against M. C. Coleman, witness and J. L. Warren, for $952.22 principal. That is the debt I have reference to in all my testimony, that is the note I am involved in.

L. W. YOUMANS, witness for the complainant testified:

I am a creditor of M. C. Coleman, bankrupt. He borrowed some money from the bank to improve—I am security on his note, accommodation endorser. The note is signed by me and T. F. Lewis. I am a brother of J. E. Youmans just on the stand. M. C. Coleman came to me and I signed it and he said he was going to Mr. Lewis and I was informed afterwards he signed it. This is the renewal note (Note handed witness). The Citizens Bank of Swainsboro has proven against Bankrupt M. C. Coleman on an execution against M. C. Coleman, witness and T. F. Lewis for the sum of $636.50. I suppose that is the note and debt I have reference to. The cost and all was nearly $900.00. The original note was given 10, 11 or 12 years ago.

The Bankrupt M. C. Coleman, informed me that he was in possession of this tract of land which is sued for, at the time I signed that original note with him. He got the money to improve that place over there, the place now being sued for. I signed the note on the strength of his statement, that statement. In that conversation with reference to whose place it was, he said it was his place.

I signed the note on the strength of that statement that it belonged to him.

Q. Now, at the time you renewed this note from time to time, and up to the time you signed the last renewal, which is now sued and in judgment I believe, was Mr. Coleman, the bankrupt still in possession of that same tract of land?

A. He said he was, and said he had done all he could to get his land fixed where he could make a living.
21 I and my co-surety on the note have been called upon to pay any part of this debt. I have not been over to the place recently to make any examination of it as to improvements. I did

not know of any other assets that the bankrupt had at the time he got me to sign this original note, other than this place, except his personal property, live stock and so on. That he was using on the place. I did not know how much live stock he had on the place at the time the note was signed.

BARTOW MOORE, witness for the complainant testified:

I am a creditor of the bankrupt, M. C. Coleman, he came and got me to sign a note with him to borrow, I did it just to accommodate him to aid him, help him get money, no consideration actually passed to me. I don't remember just when it was signed, I know I paid it, but don't remember when I signed it. That note is to the Bank of Norristown, it has been within the last two or three years, something of that sort. At the time he procured my signature to the note, he, M. C. Coleman told me he wanted to borrow money to haul some timber, he didn't want to sell right then, wanted to keep the timber a little while longer. He was ta-king about the place he had over the Ohoopee.

Q. The place over the Ohoopee is this place you speak of, that is in dispute?

A. That is the way he spoke of it, as "my place," all right. He was in possession. The Bankrupt in possession of the tract of land at the time I signed this note. I do not know exactly who was living on it. I don't remember whether Dan Davis had moved over there then or not.

I have been over that tract of land recently, I went with Judge Youmans the other day. I do not know hardly what that tract of land would be worth as it now stands. I do not know that I could tell just exactly what the value of the improvements, the cost of erecting the improvements now on the place is; looks to me like worth something like four or five thousand dollars.

I was with Judge Youmans when we all together made the calculation that he took down on a memorandum. J. W. Smith
22 and Dan Davis were with me at the time Judge Youmans made that list. We all agreed to the different valuations noted at that time. I think somewhere about 280 acres in cultivation.

M. B. GILLIS, testified for complainant:

I am a creditor of M. C. Coleman, the bankrupt. Became a creditor by endorsing his note. That is the note which the Bank of Norristown now has. They are two notes dated December 18th, 1914, I think so. That was a renewal of another note, I do not remember exactly the time. I endorsed for him and that he was about to be sued on the note and came around and got me to endorse a new note, you know. Not very long after the original note was given, he got me to endorse the second one. I do not remember exactly but wasn't but a few days, about a month, I think, maybe, just a short time, and the note came due and they were after him. I don't remember exactly how long it was. All of this was before

M. C. Coleman went into bankruptcy. At the time when I signed the renewal, and the original note to the Bank of Norristown, M. C. Coleman the bankrupt I believe was in possession of this tract of land across the Ohoopee that we are suing for.

Q. Well, he or his tenant?

A. Well, Mr. Davis had it in charge. I am unable to say how long he lived on that land himself, three or four years. I suppose he and his family been off from there two or three years. Mr. Davis was on the place, Daniel Davis. He was in possession of the place at the time I signed the note farming it as tenant.

Q. Mr. Gillis, what statement did the bankrupt make to you at the time he procured your signature to that original note or the renewal thereof?

A. He first told me he was going to pay this note with his rent money. It was but a few days before it was due. I do not know that it was the first of October 1915, but when this note became due, that he was going to pay it with his rent money, and he got his rent money that same day. He was talking about the rent of his place, this place, he gave me a draft on some man in Savannah to take up one note but it was turned down and wasn't paid, then they were going to sue it, and he wanted to come round, and wanted
23 me to sign a new note for him; said he would carry it over if I would sign a new note. I asked him to go to his father. He said that was something he never had done and never would do, and finally told me, "If you will do this, if you will sign theses notes for me I will go back by my store and commissary over there at the spring, and says "I will get this, meaning his rent note," and I will give it to you—attach it to the—turn it over to Mr. McCrary, he was cashier of the Norristown Bank, Bank of Norristown. He was talking about that—let me see, that was the note for 1914, I reckon. It was the note given by Dan Davis. The amount of the rent note was one thousand dollars. I do not know that he mentioned the amount of the note, but he says I "will put up this year's rent note." I heard he was getting $1000.00 rent for this place. I don't know if he ever told me what he was getting. He mentioned to me that he would pay this note with his rent note; that was the first time, and the next time, when he got the renewal, he was going to put up that year's note as security, with me. It was the rent note for the year in which I signed the note.

Q. The rent note for what place?

A. Talking about the place where Dan Davis lived. And that is the place we are suing for now. I then signed the note and I signed it on the strength of this assurance. The bankrupt did not put up this rent note, for the year in which the note was given. The renewal note is the one proven here, dated December 18th, 1914, due September 1, 1915. It was the rent note for 1915 that he was going to put up. The renewal note was the one which he was going to put up. He told me he was going to pay the first note with that year's rent, but he did not do it, and when they were threatening, going to sue it, he said he would put up the next year's rent note. I

was called on subsequently by the Bank of Norristown to pay this note. I paid it. The fi. fa. is $560.00 with interest and costs.

J. W. SMITH, witness for complainant testified:

I am Vice-President of the Bank of Norristown. I have been through this tract of land in dispute a few times. Pretty much in a general way practically all my life I have known it. M. C.
24 Coleman, the bankrupt got in debt there a whole lot, the Bank of Norristown extended credit to him.

Q. At the time you extended credit, was M. C. Coleman in possession either in person or by tenant of this tract of land we are suing for now?

A. Why at that time I thought he owned that land, that it was his property. He was in possession of it, either personally or through tenant, I think he was. The year that it was that I extended the credit to him, it might probably have been the latter part of '13 or '14, I think it was, the best I can remember.

I do not know who was living on there right at that time. Dan Davis, I am pretty sure he was there. M. C. Coleman did not make any statement to me, or in my presence to any official of the bank in reference to this particular property when he obtained credit from the bank, not to me, he did not. Not in my presence. I was over this tract of land a few days ago, with Dan Davis, J. E. Youmans and Bartow Moore. As this tract of land now stands, I think it is worth $30.00 per acre. I think it is an average place, the character of the improvements and the condition of the improvements for farm purposes are pretty good. I think the value would be the same in January, 1915, or thereabout. Worth the same then as now. I am not experienced in building, I have never done any of it, just an estimation I should think the buildings and fences is worth right around four thousand dollars.

I cannot tell the cost of clearing the land and preparing it for cultivation. I cannot tell the value of the land in 1902, 1903, and I do not recall when M. C. Coleman first went over there and cleared that place up.

T. H. Cox, witness for complainant testified:

I suppose I do know this tract of land that is in dispute, that the trustee is bringing suit for. It is now about three miles from where I live. I have been living right around there for the last fifteen or sixteen years. I knew that place prior to the time M. C. Coleman entered into possession of it, I was the second man to live in the house, the first house that was built on the place. The timber
25 had been cut off when M. C. Coleman entered into possession, by a Mr. Rentz, I suppose Rentz cut it for saw mill purposes. I cannot tell you that it was after the timber had been cut off that Coleman took possession. I do know how the timber had been cut when I went there. The timber was cut before I went there. I do not know what year it was that M. C. Coleman went into possession.

He was in possession when I went there. I went there in 1903. When I went there, why only one house was on the place. I moved into it. Wasn't any acres in cultivation, men clearing it up, when I went there. Just a little broke up the summer when I went there and I tended it that Fall. About eighteen acres I suppose. The house was a new house, it is on the place there now. I helped to put up one or two buildings. I built the house next where he lived. It was a new house. The negro house between where I lived and Mr. L— lived.

Q. Now, Mr. Cox, who did you erect those buildings for?

A. I traded with Math Coleman, M. C. Coleman. M. C. Coleman paid me for the work. I cleared the land. M. C. Coleman paid me for it. I put up fencing and he paid me, he paid me for everything I done there. I worked the place and lived there for a period of time. I worked it two years share farming and then on rental. I share, farmed and accounted to for the other portion of the crop with, Math, M. C. Coleman. I rented it from him. I paid him the rent myself.

Q. Now what years were they?

A. I went there in 1903, 4, 5 and 6, 7 and 1908. 1909 I moved away from it, the ninth year. I cannot tell you how many acres were in cultivation when I moved away from it, I never did get down and measure off the acres. I tended the last year I stayed there a four horse farm. Now, there was one farm that was over the lane there belonged to his father. He said that was his father's. One farm was over there; left me with the three horse farm on his place. I tended the three horse farm on his place. The tract of land adjoining that was called his father's place. The place that I built up was known as Math's place.

Q. Did any one ever point out the lines of that place to you, Mr. Cox?

A. Yes sir. Mr. Math. When I was clearing he showed me where the line would be, the line between me and his Pa. I don't know that he ever said whether the land was given to him or not. He said it was His'n. When he pointed out the line to me, he went down to the branch and showed where the line and the branch came together. He says come up to the Branch and go right
26 straight across to the corner of Mr. John W. Gillis—I do not know that he ever told me where he got the land from. I had it down his Pa gave it to him. I did not know but he might have bought it and paid for it. I do not know that I ever asked him. M. C. Coleman never did live on it. He lived on his Pa's place, on the other side, in an old house, the first two years that I went there.

Q. After you left there, who moved on this place?

A. Math Coleman. I could, when it was run up, tell what the lines were that M. C. Coleman pointed out to me as being the lines of this place. I followed the chain carried one end of the chain. F. C. Gillis handled it. Math had the lines run out I reckon, him and his Pa was both along there. Best I remember now, I think his father was there. I am not sure, but I think he was there part of the time, but don't know whether he was there all day or not. I know

this place as it now stands. There is another 50 acre tract of land there I believe, that is in cultivation and used in connection with that plantation. That is the place I call the Stewart place. That is a separate place. There was some little buildings on it when I was there. None now, I do not think. I think they were all moved away. I gave a rent note for the rent of the land. I think all have been destroyed I have not got any. I made a search for them.

Q. Did you make diligent search?

A. I found the last settlement between me and Mr. Math Coleman. We had an arbitration and found the settlement that was made between us. I never bought it. I could not find the rent notes. I think they have been destroyed, I think I burned them up. The first year I got the place at $250.00, the last year $310. for it. The notes were payable to Math Coleman, and I paid them to him.

Cross-examination:

I do not know when M. C. Coleman went into possession of this property. He was in possession when I went there. He was living then there, he lived on his father's place. I do not think he ever lived on this place.

DAN DAVIS, witness for complainant testified:

I am now residing on this tract of land the complainant is suing for. The first year I started living there, I made a crop there, 1914.

27 Q. From whom did you obtain possession of those premises.

A. I leased from Math Coleman. M. C. Coleman for five years. I gave him five rent notes, for the amount of $1000.00 for each year.

Q. Will you please say if there are two of these notes; one dated Dec. 11th, 1913, calling for the payment to M. C. Coleman landlord or agent of $1000.00 on the first day of October, 1915; Is that one of them?

A. Yes sir, that is one of them. Another note bearing same date calling for the payment of $1000.00 on October 1st, 1916, to M. C. Coleman, landlord or bearer same date. There is one note between them. That is another one of the notes. There were five of these notes, covering the years, 1914, 1915, 1916, 1917, 1918. The note maturing in 1915, which was submitted the witness, is herewith copied, material parts being included, all of the same notes are of like tenor and effect except only as to date of maturity.

Georgia, Emanuel County.

$1000.00. Swainsboro, December 11th, 1913.

On October the first, 1915 next, I promise to pay to the order of M. C. Coleman, Landlord or Bearer, One Thousand Dollars for rent of ten horse farm, the present year on part of the Anthony Phillips Place, adjoining (here is described the place, which is bounded

North by lands of E. J. Coleman, East lands of Stewart, South by lands of Phillips and E. J. Coleman, and West by lands estate of N. L. Gillis, John W. Gillis. Containing agreement that landlord liens dates from date of note, with power of distraint to the transferee, power to assign the lien, agreement to pay ten per cent attorney's fees in event placed in hands of Attorney for collection, and waiver for self and family of homestead rights. If not paid at maturity interest at rate of 8 per cent per annum. Witnessed by two witnesses one of whom was Clerk of the Superior Court, Emanuel County, Ga.

My period of rental has one year beyond the present year yet to run, I have got one year more. I am working that place and cultivating it, as tenant under the original contract of rental now. I paid the two notes payable in 1915 and 1916. I paid the 1915 note and the 1916 note Two thousand dollars to Mr. E. J. Coleman. The respondent in this case. The rent for the year 1914 I paid to M. C. Coleman. He surrendered that note when I paid it. The contract I made when I went into possession of that place, I leased it from Mr. Math Coleman. He taken me around and showed me and
28 told me what he had there, and he told me that there was a ten horse farm. We went around that place and I leased it. I gave him one thousand dollars per year for five years. I had no dealings directly or indirectly with anyone else in that contract of rental, other than with M. C. Coleman. I dealt with him as landlord. I did not know anyone else in the deal. Just guessing, I think about 260 acres are in cultivation in the whole thing. That includes the cultivated lands on what we call the Stewart tract, that is fifty acres, the Stewart land that M. C. Coleman had deed to and which the trustee of the bankrupt sold. I do not think there is over 260 acres of cleared land on it all.

Q. Now deducting from this total of 260 acres the number of acres on the Stewart tract, how many acres would there be left on the other tract which is in controversy?

A. I do not think over 35 acres, something like that, on the Stewart tract, and that would leave the rest of it with 260 acres on that, which would be about 255 acres or something like that. Looking at plat, hereinafter referred to, the witness — this lot, indicating, would be the Dunlop place; that is cut out. I take that to be the Dunlop place. The Stewart place is — shown it is back in this bend, (indicating). That is sort of on the South. The Dunlop place is north, it is about one side across that. That bend cuts round. Now Gabe Phillips' place comes right in here (indicating), comes down the line, that Stewart place and this bend here (indicating) is where the 50 acres comes in.

The witness indicates on the map the boundaries as given in the rent notes, which describes the tract. The descriptions in the rent note and in the plat correspond.

Q. Mr. Davis, Mr. Coleman, T. H. Coleman seems to have farmed and cultivated this place up to and including the year 1908. You say you went there in 1914?

A. Yes sir. I do not know who cultivated the place or was in possession of it from 1908 to 1914. I went over there in 1910, if I am not mistaken. I hired Mr. Fred Flanders in the summer to ride turpentine woods for him and to my recollection there was an old gentleman by the name of Wilson living on the place the
29 year that I went there. This man was cultivating the place during that time, according to hearsay, heard it was for M. C. Coleman. All I know is what I heard, Math Coleman. Before I went on the place, Math Coleman lived over there on—beyond Norristown, on what is called the Rowan Durden place. That is off in another settlement. I do not know where he lived before he moved to the Rowan Durden place. He was not on this tract, my recollection is I went there in October, 1910. I heard that Mr. Rentz cut the timber off that tract. $1000.00 per year is mighty big rental value for that place. I am paying of it. I suppose the fair market value of that place as it stands now, it ought to bring $30.00 or $35.00 per acre. It is a fine place. It is rated a good place. It produces well. The reasonable rental of the place about January, 1915, was about the same. In 1904 or 1905 after the timber had been cut off this place the value of the tract of land at that time woodland, I judge to be worth something like $10.00 per acre.

I do not know the cost of erecting the improvements on this place. I never had any experience in that, I do not know, but it is worth a right smart. I went over the place with Judge Youmans, Bartow Moore and J. W. Smith. They came to my house and asked me to go and show them the buildings and I went. I was present when the estimate of value was placed on all the improvements.

Q. Judge Youmans took a memorandum of them at that time, did you take a memorandum also Mr. Davis?

A. Just in my head, I think I called it over. The first house is what I call the Love house, my recollection is it was all settled, that place, buildings, dwelling house, lot and farm houses, I think $400.00. The next house was what I call the Sidney Gunn house, a negro lived in it by name Sidney Gunn. I think it was $200.00. The next house was rated at $600.00 the Albert Brown house I think was $400.00, seems four or five hundred dollars. The Alfred Boom house I think was 2 to 3 hundred dollars. And the house that I live in I think they rated the building $1500.00. Wire fences all around it except in two places. Towards the Stewart place you have a wire fence, then there is the field they call 82 acres it is between, joins down there with the Dunlop farm, and there is about 550
30 panels of rail fence, the rest of it all wire. There is a lane runs through there. Well there is more than that, there is a cross fence there, that Mr. Coleman, Barn Coleman gave me the wire to build the fence between that field that I tend and the (field) that Mr. Sumner has. As to the cost of the wire fence which Mr. M. C. Coleman put up there, its value, I never built a wire fence, except to put up the wire on two at the time. The posts per mile, I would not get out for less than $50.00. I might be over estimating it, but I would hate to try it for less. The cost of wire, I heard them say, $100.00 per mile. I think over five miles of wire

fence was around there. I could not clear the land and cut it up, break it up and fix it where it would be—not for less than something like $4.00 per acre. I have never figured on it. A man taking his time and turning it over could do about an acre and a quarter per day, turning it over with a mule. In addition to clearing it up and burning the brush, etc.

Q. How much of these improvements have been erected on the place in four years prior to the bankruptcy of M. C. Coleman.

A. He built that house I live in. That is the $1,500.00. They started to build it in 1913, they finished it by—I moved there before they got it done, I think, I moved the 6th of January, 1914. They built it in the early part of 1914 and 1913, say in 1913 and early part of 1914. That is all the improvements made along about that time, just that building. No lands cleared up or placed in cultivation within four years before bankruptcy, not that I know of. I have cleared up some little rough places in the field taken in, maybe 4 to 6 acres. They were done fenced.

Cross-examination:

The rental I agreed to pay of $1,000.00 per year was a good rental for that place, it was well rented at $1,000.00 per year. It put me to my best to do it.

Q. Well, in reference to the fencing, wire fencing, do you know who furnished any other wire outside of that cross fence, or the fence between the two.

A. Mr. Coleman furnished me some wire.

—. Mr. Barm Coleman?

A. Yes, sir.

Q. When did he furnish you that, was it prior to the time
31 Mr. M. C. Coleman went into bankruptcy?

A. Yes, sir, he furnished me three or four rules. I disremember which, this last Fall, winter, and the fall before that furnished three or four rolls, I disremember. I remember the time M. C. Coleman went into bankruptcy.

Q. He furnish you any before that, Mr. E. J. Coleman?

A. Since that time? Yes sir.

Q. Furnished other wire outside of the cross fence; you say he furnished the wire to put that up?

A. Other wire on the place? Mr. Math Coleman furnished me some wire. I disremember how many rolls, about a half mile of it, maybe more than that. I can not tell who furnished the balance of the six miles, it was there when I went over there. I do not know whether it was furnished by E. J. Coleman. I cannot tell the number of acres of the Rowan Durden place M. C. Coleman lived on. No idea. I do not know, but a good sized farm, my recollection Mr. Math Coleman told me about eight horse farm, but I won't be positive about that.

I never had any dealings with anybody but M. C. Coleman, when I rented it. E. J. Coleman was not present. Never had anything to say to me, nor me to him about it.

Redirect examination:

The rent notes were prepared, me and Math Coleman went to Swainsboro and H. Johnson, Clerk, he wrote them or had John Tyler, they were executed in the Clerk's office. When I executed them I gave them to Math Coleman. All five notes I handed him.

Q. Barm Coleman, as you call him, furnished you wire since M. C. Coleman went into bankruptcy, for what purpose was that furnished? You spoke about a cross-fence.

A. He never furnished me none to build, the cross-fence; that was the lane fence, the fence between me and Mr. Owen Sumlin. Between that tract of land and the tract that Owens Sumlin lived on. E. J. Coleman furnished that, Owens Sumlin married his daughter. He and her husband lived on the place near there. Adjoining this, yes, part of the same tract. Lige Coleman, member of Mr. Coleman's family has a tract of land near there, that is E. J. Cole-
32 man's son. His land adjoins mine, lane between me and him, runs right up to my house. He is E. J. Coleman's son. At the time I first rented this property from M. C. Coleman (Mr. Math Coleman), he told me he wanted to rent me a place that he had in charge for his father, and I rented it. A few days later he came back and told me—might have been a week, maybe a month, sometime afterwards he came to me and told me had had to back out of that; that his Pa had given it over to Lige and he moved over there and took it in. In renting this other then, I and Math Coleman discussed the matter of my renting, not only these premises, but a place that belonged to his father, he told me—we had rented it, and me and Arch Macon, in turpentine business together, and we had a negro who wanted to farm. He had a large family and I believe the negro had lived over there with Mr. Summerlin the year before and we had cropped the boxes right back all around in there, and he, the negro wanted the house to live in, and we had to rent the place for him to get the house and we rented it from Mr. Math Coleman.

Q. This is whose property he rented to you, you and Macon?

A. Mr. Barm Coleman, his father's property, that is what he said.

Q. Was that this place and another place?

A. That place he lives on, same tract.

Q. Not a part of the 277 acres covered by the plat.

A. No sir.

Now, when I wanted to rent the whole place from him, later on, then Math Coleman talked to me about also renting that same piece of land he had previously rented to me for the negro. He said he done it for his father. He said he would like to rent me that too, and the negro that was living on it was going to work for me, and I made arrangements for him to stay right on where he was. And I say subsequently Math told me he couldn't arrange to rent me that particular piece of land, that belonged to his father, and that his family gave it to Lige, that is what he told me, and of course, the papers were not drawn up, and of course it was satisfactory to back out. That was not all in the same transaction and conversation in which he talked to me about renting this piece of land we are suing for. Not

right at the same time. It came a little later on—came and told me he would like to rent that piece.

33 Q. In that conversation or any *any* other, did he ever state and claim anything other than that this 237 acres tract was his, M. C. Coleman's?

A. No sir, that was all he said, just "his place," there, that he wanted to rent it.

Recross-examination:

Mr. Barm Coleman's son moved on this place that Math did not rent to me, Math told me he wanted to give that place over to him. He did move on it, he did not live on it himself, he built him a house over there adjoining, and moved negroes on it, same tract. He took charge of that tract. That is a part of the original tract that this land which is in dispute belonged to, it is all known as the Phillips tract, and M. C. Coleman rented me part of that, and took my rent note. And the other part of it, the son of Mr. Coleman, the defendant, moved on there and took charge of it. I do not think that son when he moved there was over 25, might not have been that old.

Q. Now, the other place, that cross fence is built between, you may say Mr. Coleman's daughter——

A. Yes sir, Mr. Coleman furnished me some wire to build the cross fence; there wasn't any fence across there, and I hauled the wire down there to build it, but I got behind with my work, and I did not complete it, and the fence got all ramshackled, and I taken that wire up and built around on the outside, used it. I cannot tell you the time when the daughter of Mr. Coleman moved on this place, I cannot tell you who lived over there when I moved.

Q. After the defendant, Mr. Coleman here, sent wire over there twice to build the cross fence—Mr. Barm Coleman the defendant——

A. Not twice, not to build the cross fence. He sent wire once to build it, and I did not build it and he gave me wire——

Q. Where did the wire come from you were to build with and did not use it?

A. Math Coleman gave it to me. I got it at Norristown, off his platform, and he—I can tell you what he said about it?

Q. No, I am asking what you know about it, whose wire that was?

A. It was Math Coleman's. Well that is what I asked you just then, tell you what he said.

Q. I am asking you how you know?

A. I cannot tell you, Col. for I do not know whether it is his or not, but he said——

Q. You do not know?

A. No sir.

34 2nd redirect:

Math Coleman, I went to him for some wire and there was a railroad runs through the place, there is just a little slice off one side of a field, was a wire fence around it and the railroad had set in some

of the fence and ramshackled it up, and me and Math were around there and I asked him, "Mr. Coleman, we need some fence here too," he said, "Well, I will furnish you the wire and you put your fence here alongside the railroad, and leave the railroad on the outside." He said "Lige has got some, I will borrow it from him" and he told me to get it I went. Afterwards Lige Coleman, about a year come to see me for the wire, I told him I could do nothing about it. Math gave me the wire, look to him. He mentioned it to me one day near Math Coleman. I told Mr. Coleman, "I wish you would settle the matter with Mr. Lige. He thinks probably I got that wire." I says Mr. Math said he put it on the place, that is all.

F. C. GILLIS, witness for complainant testified:

I am a surveyor, and I executed that plat, paper handed to witness being a plat of an irregular shaped tract of land, with metes and bounds drawn on the scale of 20 chains to the inch, and the legend being as follows: "Georgia, Emanuel County, Surveyed for M. C. Coleman a tract of pine land containing two hundred and thirty seven acres, surveyed by, (signed) F. C. Gillis, Surveyed August 14th, 1905. The tract of land, within the bounds and lines given, shows the adjoining lands and boundaries to be, one side, bounded by E. J. Coleman, one side by J. W. Gillis, one side by Hester Barwick, and one side by J. C. Coleman. On the tract of land thus surveyed, appears written across the surveyed land, "M. C. Coleman," and "237 acres of pine land" and on one side the land is bounded by Reedy Creek."

Q. When did you execute that, Mr. Gillis, referring to the above plat.

A. I done the work in 1905. August 14th, 1905. I made the survey under the instructions of E. J. Coleman. He only instructed me to make that survey and said he was going to let Math have it, and that is all he told me about it. He pointed out the lines to me, told me where to run to. He told me to run from certain corner to head of branch and run down the branch to Red Creek; that is the dividing line between—that is the line cut off. The survey was made according to E. J. Coleman's instructions. All that I heard Mr. E. J. Coleman say about why he wanted the survey made, was that he was going to let Math have that part of the land that he had cut off, and that is all he did say about it.

Q. That is M. C. Coleman.

A. Yes, sir. I disremember now who paid for the survey. I made the original plat, of which this is a copy, and sent it through the mails to E. J. Coleman. The data from which I made this new plat, recently for the complainant, was from the original field books. From that field book it was surveyed off as M. C. Coleman's land, like it is here. I never did receive any acknowledgment from E. J. Coleman that he had received the original plat. All I know is that I mailed it to him, I suppose he got it.

Q. By due course of Mail?

A. Swainsboro address. At the time I made this survey, I think

some of the timber had been cut, and some of it was there. I think Mr. Rentz cut off a portion. Well, he left a good deal of timber on it, that is my recollection now, but I am not positive. I think Rentz cut it before I made the survey; I do not think what timber was on it, amounted to very much. Practically all the saw mill timber had been cut off. I do not remember the year Rentz cut the timber.

At the time I made the survey a portion of the land was in cultivation. I don't know how much. All of it was not new ground that had been cleared up, some of it tolerable old land. I don't know who cleared the land.

Cross-examination:

The survey was originally made in 1905, and was made at the request of E. J. Coleman. And I say at that time he told me that it was a piece of land he was going to allow Math to have and Math is M. C. Coleman. And I mailed the plat to him. He requested me to mail it to him. I mailed it to him. I do not know who was living on the piece of land belonging to E. J. Coleman adjoining this tract at that time. I do not know whether Math lived there at the time I made the survey, I cannot say.

Q. He had been living on this piece of land?

A. No sir, lived in the original Phillips house. And this is known as the Phillips survey or part of it.

36 Q. M. C. Coleman lived in the old Phillips house which is not covered by this survey?

A. No sir, not covered by this survey. There was a house on this land at that time, Mr. Cox lived on that land. I do not recall how many houses, I think the timber had been pretty well cut off. That is the only conversation I ever had with Mr. Coleman about this. I never did have any conversation with M. C. Coleman about surveying the land, or anything about that.

(By the Master):

Q. Are you the County Surveyor?

A. No sir, I was not at that time. I have been County Surveyor, but was not then. I don't recall but one of the chain carriers, that was Tom Cox. That is the Mr. Cox here today.

Q. You do not know who he was there in possession under, at that time?

A. I do not know, but was under the impression that he got into possession through Mr. Coleman. I do not know that to be a fact; that is just an opinion of mine.

Q. You know whether M. C. Coleman has been in possession of that tract of land ever since that time, the time you made that survey up until his bankruptcy, either by himself or by tenants or by hands working for him?

A. Well, I really don't know that I do, Colonel. It has been the general talk that it belonged to Math Coleman and people that moved on the place generally made trade with him. That is all I know about it.

L. A. McCRARY, witness for plaintiff, testified:

I am cashier of the Bank of Norristown. It extended credit to M. C. Coleman. I did not take charge until August 1914, August 3rd. At that time M. C. Coleman owed the bank around $6000.00.

Q. Was any of that extended at that time.

A. Yes sir, it was a note, were renewed. Part of it was in the shape of overdrafts. At the time of these transactions M. C. Coleman was in possession of this tract of land the complainant is suing for by tenant. I knew and the officials who made the transactions knew of this particular tract of land, they told me. I knew of this particular tract of land as an official of the bank.

Q. Did you extend credit on the faith of the ownership of M. C. Coleman of this tract of land?

37 A. I was not credit man at that time, because I had just come in, and I didn't know Mr. Coleman.

Q. Was any credit extended on the faith of the ownership of that tract of land?

A. Yes sir. Mr. Coleman did not have any other assets at that time that I know of. He was running a shingle mill, he had some personal property.

Q. Did you, as cashier of the bank, or the bank officials to your knowledge have any notice of any claim of E. J. Coleman to this tract of land?

A. No sir, not that I know of.

Q. When was it that the bank first received any notice of the claim of E. J. Coleman to this tract of land?

A. No notice at all until Mr. M. C. Coleman had gone into bankruptcy. E. J. Coleman is the father of M. C. Coleman, E. J. Coleman is a man of some means. He is either the third or the fourth richest man in Emanuel County. He is generally reputed to be worth seventy-five thousand dollars. He is a large land owner. I never investigated the records for the particular purpose, but it is understood that he owns quite a lot.

Cross-examination:

I was not credit man when these overdrafts and different notice were given at the bank.

Q. How do you know that the bank extended credit on the strength of this land that is in dispute.

A. Well, my directors——

Q. That is what I thought.

Witness: I looked after the renewals, but was not there when the original transactions were made. This land was worth more than the amount Mr. Coleman owed the bank.

Q. Why did you take security on that note?

A. Custom of the bank to take security. I lent it on the land and took security according to custom, that is the way I did it.

Q. You loaned him on his own responsibility and took security according to custom?

A. It is according to what a man is worth, as to the amount of credit extended to him. I did not look to find out who owned that piece of property.

Q. So you didn't know who owned it?

A. I takes the record that is gotten up by Mr. —— that
38 he owns so many acres of land, and I report that to my directors and I have that on file there now.

Q. Is that land described?

A. No sir, not described in that, but is described in the rent note which he was to place with the bank, and I had to collect from Dan Davis, the piece of land described in that note and I presumed that was the same piece of land. I acted on a presumption and not on my knowledge.

Redirect examination:

I say I did collect the rent note from Dan Davis, he paid it to the bank for Mr. Coleman. That the first rent note for 1914, yes, during the fall of 1914. It was collected for the account of M. C. Coleman. 1915 I collected, went to E. J. Coleman. He had the note and turned it over to me for collection.

Q. And since the year 1915, E. J. turned them over?

A Yes sir. In 1914 I collected rent on the same place on note turned over to me by M. C. Coleman, note made payable to M. C. Coleman and went to M. C. Coleman. And in 1915 I accounted to E. J. Coleman.

DAN DAVIS, witness for plaintiff recalled, testified:

I say the rental value of the premises, the entire premises I am renting is $1,000.00 per year. I stated in my other testimony that there was something like 35 acres of that land of the Stewart place, which I cultivate and which was sold by the trustee. I judge about 35 acres. I think it would be about $125.00 for that. Ain't any house on it. There was a house there, but I tore it down and moved it to where I live, by request of Mr. Coleman—said I could do it—and the other would be $875.00. All of these settlements and improvements built there on this piece of land are covered by this plat, they are on that.

M. C. COLEMAN, witness for the plaintiff, he being the Bankrupt, testified:

I was sworn by the Referee at the examination that I submitted to
39 him in the Bankrupt Court at the first meeting of my creditors. And I testified at that hearing.

Q. Your schedules in bankruptcy show that you owed at the time you filed your bankruptcy petition, $16,038.08 unsecured claims, and $995.00 of notes and bills which ought to be paid by others, and $1,837.00 of accommodation paper. You owed practically all of that amount shown in your schedules, which were filed May 8th, 1915,—you owed practically all that amount on January 1st, 1915, did you not?

A. Well, I might have owed about the amount; I guess so, yes sir. Practically that amount. I think there wasn't any property including this land that is in controversy now, that I had any rights to at the time that I filed my bankruptcy petition, May 8th, 1915, but what I had a right to on January 1st, 1915, the assets I scheduled on May 8th, 1915, I owned those assets on January 1st, 1915, I think so.

All valued at, on January 1st, practically what they were, May 8th. 1915, about that. My schedules show $9,071. of assets and I owed $19,077.00 of debts when I filed the petition so that I practically owed the same amount of debts and had practically the same amount of assets on January 1st, 1915. About that. I suppose I was insolvent on January 1st, 1915. My insolvency did not happen all of a sudden.

Q. How long before January 1st, 1915, do you account that you were insolvent?

A. Why about August, 1914, I suppose so, about the time the European War. In the fall of 1914 suits were filed against me and judgments taken against me in the courts of Emanuel County. And it was not until those suits had been filed against me, and judgments rendered against me, that I turned the rent notes back to my father. There had been suits filed against me for quite a long time, four or five years before that. I don't remember that some judgments were rendered against me too.

Q. I am going to read to you some questions that were asked you by the stenographer's notes of the testimony before the Referee, and I am going to read the questions, and going to read your answers, and I am going to ask you now if they are true.

The following questions, reading from the said report of testimony were propounded and thus answered:

40 "Q. Mr. Coleman, the 50 acre place you spoke of, to whom is it rented this year?

A. Dan Davis."

That is true is it not?

A. Yes sir.

"Q. Did he rent that as a separate proposition; is he giving you rent for it?

A. I have his note for it."

That is true is it not?

A. Yes sir, I had his note altogether.

"Q. Have you that note?

A. No, sir, my father has that note all together."

That is true?

A. Yes sir.

"Q. When did you turn the note over to your father?

A. In January or February; I don't remember which."

That is true?

A. Yes sir.

Q. This examination took place on June, 1915?

"Q. Did you turn him over any other rent notes at that time?

A. No sir, none."

That is true, is it not?

A. Yes sir.

"Q. Well, you used the term "all together" a while ago. What did you mean by that?

A. Well, Mr. Davis has a ten horse farm rented down there, a place that my father was to give me, and he never did make me any deed to it, and it was all in there together and I bought it, and when I rented it I rented it all together, $1,000.00 for 4 years."

Is that true?

A. Well, now about all of it, I bought the fifty acres.

Q. But the rest of that true?

A. Well I got the fifty acres. And the other is the tract involved in this case. I bought the fifty acres. The rest of the answer, "Well, Mr. Davis has a 10 horse farm rented down there, a place that my father was to give me, and he never did make me any deed to it, and it was all together and I bought it, "that true I only bought 50 acres. And it is true that I answered "and when I rented it all together $1,000.00 for four years," and that is true. In the matter of the fifty acres of land, the contract expires in 1918. I think that is true, I am not sure when the lease runs out.

"Q. Did he give you notes for the full period, $1,000 for each year?

A. Yes sir."

"Q. Did you turn them over to your father?

A. Yes sir."

41 Q. That's true?

A. Yes sir, they were turned over to him in January or February, that is true.

"Q. What for?

A. Because I considered it his property. He had never given me a deed. He could trade with Davis and keep him or run him off."

That is your answer to that?

A. Yes sir.

"Q. What agreement did you make with your father with reference to this place? You spoke about he was to give it to you. Explain what agreement was made—All about the transaction."

Here is your answer,

"I was just married and started housekeeping and moved on this place."

That is true?

A. Yes sir, I did not move on this particular place.

"Q. That was fourteen years ago?

A. About 14 years ago—and there was some land off in the woods and he told me if I could take it in I could have it. I went in there and cleared up—cultivated it, fenced it and cleared it up, a 10 horse farm, and I have been cutting the rents out of it, but I never got no deed to it."

Is that true?

A. Yes sir.

"Q. All in the woods?

A. Yes sir."

Q. No buildings?
A. No sir.
"Q. How many settlements did you build on it?
A. Some 8 or 9 I don't remember."
All that is true is it not?
A. Yes sir.
"Q. How many acres in the tract?
A. 227 acres.

Q. So you testified before the Referee and you now testify that you were married about 14 years before the time this testimony was taken and your father had this land in the woods cut off from other lands, and promised to give it to you, and you took charge of it, and you took the rent notes ever since that time, up to the time you turned over the rent notes to him, but your father never made you a deed to it, and for that reason you determined that he should take the rent notes, because he never had given you a deed?

A. Well, a short while, I don't remember how long, after the piece of land was cut off, he came back and said that there was more of the property than he could make me a deed to and make the other children have the same amount, and that he was not going to make me a deed, that he would sell it to me for so much, and the price was never agreed on. I never did live on the place, never did live a day on the place.

Q. Mr. Coleman, do you know that you did not tell the Referee anything about that at all?

A. I don't remember that I did.

42 Q. You were asked on that occasion to tell about the transaction, and you testified before the Referee that ever since you had been in charge of the place—that your father promised to give it to you, that you were actually in possession, that you took rent for it, and that the reason you turned the rent notes back in January or February, 1915, was because you did not have deed to the land?

A. I think in 1910 was when I got another place. I know I would not go to the place over there on that account. I did not feel like going to work the balance of my days, or a good long time, and the balance of the children come in and get the benefit of my work. I would not go to the place myself. I bought another place and moved to it. I did not go to this place.

Q. But you spent your money in improving this land in question?

A. Some little spent—I did not improve the land, put up fences on the land, and represented myself as the owner of the land. Wasn't any of my neighbors didn't know that it wasn't mine. I rented it to Mr. Davis, and I collected the rent and used the money as my own.

Q. And you did not come up to the question of deed or no deed, until after you were insolvent?

A. It wasn't asked me. The question wasn't asked if I had a deed.

I turned over everything that I had, that was mine to the bankrupt court, every penny's worth that I had of mine, that that I

didn't have, of course I did not turn it over. I am represented by Mr. F. H. Saffold, and my father is represented by the same Mr. Saffold. I bought the Rowan Durden place most of it on time, principal part on time. I agreed to pay $10,000.00, I paid $4,000.00 cash balance, $6,000.00 on time. I think it was in February, 1910, I moved to the Rowan Durden place, I am not positive. But I continued to rent this other piece of land and was taking the rents from it all along—this land in question. I think it was in 1900 or 1901 I married.

Q. It was shortly after you were married that you went into possession of this land?

A. Why, two or three years, something like that. I do not know how much to figure that I spent in improving that land. I was living on another place adjoining it, stayed there four years, I think. I think at the end of four years I had took in a two horse farm of this land, I think that was it. When I turned over these rent notes to my father, I did not tell him I was in financial trouble.

43 Q. He did not know that you were in financial trouble?

A. No, I never told him anything like it.

Q. What explanation did you make to him, after 12 or 14 years' use of all the rents of this property, that you should decide all of a sudden to turn the rent notes back to him and let him get the money?

A. Well, I knew that I had to give up what I had, and this was his property. I had been using the property, getting the benefit of it, but it was his property and I would turn it back to him if he would take charge of it and get the property for his (out of) debt. I know that I saw him not two months before I went into bankruptcy, possibly a month afterwards, I think I mailed him the notes.

Q. And at the time you turned the notes back to your father your property had been levied on and advertised for sale?

A. I do not know how soon—how early before or how late, up to the time I went into bankruptcy, I don't remember.

Cross examination:

It is a fact that the first conversation between me and my father about this tract of land was that he would make a deed of gift to it, he would give it to me and make me a deed, before I went over there, before I moved over there. I do not know sir, that it was before I moved over there, right at this old place. I think he told me, the place over there, that I could go over there and if I could make a living on it, something like that, and the subsequent conversation. Then he came to me afterwards and offered to sell me the place, and told me he would take my notes for it and put them notes away, and I could pay them whenever I could. I never did do it. He did not at any time give me this piece of land. I did not at any time make any valuable improvements on it under the idea that he had given it to me. I have always acknowledged his right of property. I mention one instance when it was necessary and there was something about to be done to this property like building a railroad through it, I don't remember the year, but it was when this Wrightsville, Adrian

and Lyons Railroad was going from Lyons to Wrightsville, and there was E. J. Sumeral, — Samuels and Mr. Joe Rowland, all came to my house and ate dinner, to get permission to go through this property. I explained to them the situation it was in. I said, "Now, you can go to my father and see him; he may possibly sell you or give
44 you a right of way through it." They ate dinner at my house and we all went to Pa's in the evening and he made an agreement for them to go through this property, and it was I think about 6 or 7 years ago. I am not sure when it was. I have never paid taxes on it. I have never given it in as my property. My father furnished part of the money for the improvements I made there, and I furnished part. I did not pay any rent. I do not think the place was worth more in rental value than the amount of money that I expended by way of improvements. My experience with farms is that it takes about as much profit as you can get out of it in the year to keep it up. I did not make any money by running it, I don't consider that I did. This place that I rented, it belonged to my father. I did not pay any rent for them. He never gave me it. My sister is living on a part of this original tract, her piece of property, I think. My father told her to move over to this place, and work it, and get the benefit of it. If she could get any money out of it, the proceeds were hers, but the property was not considered hers, I don't suppose. My father had the right and dominion over this piece of property now in dispute all the time since I have been there. I recognized my father's title, ownership and right to control this property as his own, all the time while I was there. From the time I went there until the time I turned it over to him. Any time that he would have told me that he wanted it I would have given it up, because I knew it was his. It wasn't mine.

I never made a statement to any of my creditors, especially the Bank of Norristown, F. C. Gillis, Bartow Moore, M. B. Gillis, Lot Youmans or John E. Youmans that I owned this property or held it out as any inducement for them to sign any paper of mine or to lend me any money.

Q. Did you ever get any money for which the parties I have named are responsible, for the purpose of putting any improvements on this property?

A. Tell them that I—No sir.

Redirect examination:

The arrangement I claim to have had with my father was that I could keep the rents of this property until he called for them.

Q. He never did call for them. You have testified that you
45 sent them over to him without his calling for them?

A. No, I considered it his property.

Q. I know, but your arrangement with him was that you got this property——

A. We did not have any arrangement. He told me to go over there and work the place, if I worked it on halves, worked it myself or rented it.

Q. That you kept the rents?

A. Yes sir. And I had kept the rents until the time of my bankruptcy and used them as my own. Used my own money and time and labor in improving the property. And my arrangement with him was that these rents belonged to me, and I say that he has made a similar arrangement with my sister, I think that she has—I am satisfied.

Q. These rent notes were yours when you took them under that arrangement this $5000.00 of rent notes were your- under the arrangement that you made with your father?

A. Answer Yes sir.

If I had not gone into Bankruptcy I would have been collecting all these rent notes up to the present time.

Q. So that you did deprive yourself of $4000.00 of rent notes because of your insolvency and because you wanted your father to have them?

A. Yes, it was his'n.

Q. No, under your testimony it was yours; this rent was yours. Your father said you could have the rents of this property. Now, you voluntarily deprived yourself of $4000.00 after you became insolvent?

A. No sir, I gave them up before I—I didn't say my father didn't know anything about my financial condition, he knew that I was in debt, he knew that suits were being filed against me, I do not know that we talked it over. I was borrowing money from him often. I regard him as a creditor. I do not know how much I owe him, I don't remember. I know it was his property when he called for it and I knew that he would want it.

Q. But if he didn't call for it.

A. But I knew he would. I don't understand your question, which is "Will you explain to the Court how you got $16,000.00 of credit if you didn't own this land? Will you tell the court what other assets you had outside of the equity you had in the Rowan Durden place, other than this land and the personal property on this land. I had some assets except this particular piece of land that is being sued for now, and personal property on this land, and the equity in the Rowan Durden place, some property in Swainsboro, I paid $1000.00, no mortgage on it. I had 15 or 16 mules,
46 don't know what they were worth, they were mortgaged. I had a few hogs, and I had the rents that I was taking out of this land in dispute. I do not know what all that was worth. It was worth $8000 to $10,000.00 including the Rowan Durden place. My uncle finished paying for the Rowan Durden place $6200.00. I had $4000.00 equity in that place, lot at Swainsboro, $1000.00, 15 head of mules that were mortgaged, and on that with this property I want to say that I got $16,000 of credit. I never told a man in my life, that I wanted to go on my note or give them to understand that this place was mine, for any credit note. I don't know how much I owed my father. Any money that he let me have in the past he charged to me. He has got some of my notes. I do not know how

much I owed him in 1915. I had been owing him 8 or 10 years, along different times.

Q. Lot of it barred by the statutes of limitations, wasn't it?

A. How is that?

Q. Wasn't it over 10 years?

A. Could have been I suppose.

Q. And he has taken these notes from you and applied them to this claim as his property?

A. The notes covered rents from his property.

Q. But they were your notes?

A. The place was his. He could let Mr. Davis stay or run him off—opti-nal with him. If he wanted to rent to Davis, and let Davis stay there, it was his property—I considered it his property—and let me turn the notes back over to him. If he wanted to rent it to him, all right, if he considered the rent secure. I consider that I would voluntarily give that property up if I were not in bankruptcy and my father asked me for it.

Q. After he promised to give it to you?

A. He promised to give it to me, when we first talked about it. He concluded that there was more, he said, then he could give and deal with all the children alike.

Q. But he had this part cut off?

A. He said if I would give him notes—no specified amount what the notes was to be—for this property, he would take them and put them away in his papers, and at his death, in the division of his estate, them notes would come in against me. Well, I would not move to the place, when I bought the Rowan Durden place—would not move to it on that account. I wanted to buy a place to treat and make it so I could say it was mine. The notes were to be charged up as my part in the estate.

47 Q. And be cancelled at his death, and you never would have to pay them in the meantime?

A. Well, I would not have gotten them.

Q. Then you would have had the property.

A. The property would have went to some of the other children. I would not have got the benefit of it. And in spite of that fact I spent money in improving some of it. This subsequent conversation I am supposed to have had with my father, after he promised to give me the land and I had gone into possession, was a month or two after that; possibly might not have been that long, or may have been longer; 14 or 15 years ago, possibly 16.

Q. So he did promise to give it to you and you did go into possession of it under that promise?

A. No sir, I never went into possession of it, I cleared up a little of it.

Q. That was before 1905, that this second arrangement was made, because you went over there shortly after you were married, 1902, or 1903?

A. May have been four or five years I don't remember.

I stayed on the place four years, then moved back —rode turpentine four years. I don't remember whether before this or after this.

I do not remember definitely when this arrangement was made. It might have been more than two months after he had promised it, but I do not know whether it was two months or more.

Q. And he promised to give it to you 14 years, before your testimony was taken?

A. I do not know if it was 14, may have been 12 or 14, I don't remember. This railroad did not go through some land of my father's other than this tract. This railroad went through the Phillips place. The Phillips place had 1000 acres. It went through only a part of the Phillips tract, went through a corner about as wide as this room (the U. S. Court Room at Savannah.)

I did not make a deed to the railroad company, none was made that I know of. I do not know whether the railroad got a deed or not. That was six or seven years ago. The men representing the railroad were E. J. Summerlin, —— Samuels, and J. H. Rowland. They live in Johnson County. They are not here today. I went with them to my father's. I don't remember as I do know what arrangement. I didn't stay with them all the time. I was around where my mother was around the house. I say the second conversation that I do not remember when it took place, was for me
48 to agree on a valuation and then give notes for it, and then at my father's death, why then these notes would be charged up against me with the estate.

Q. And you were never to pay those notes in his life time?

A. That is the reason I did not give the notes, because I did not know I had a cent made to pay it. I did not want the notes there at his death to be charged against me. I didn't want that.

Q. You rather take the land and use the rents of the land all your life up to his death?

A. I would not do it. I went and bought another place.

Q. You would keep the rents of the place until his death and say it was his place, his if he called for it?

A. Anytime I knew it was his.

Q. As long as he didn't call for it, it was your place?

A. If he called——

Q. So long as he didn't call for it?

A. I got part of the profits as long as I could pay.

Q. As long as you wanted it?

A. So long as I kept up—As long as I kept it I got the profits. I kept it as long as I could. It was his'n.

Q. And when these creditors got to entering suits in the courts then for the first time in 12 years you gave it to your father? Isn't that so?

A. Well, I guess it is.

Recross-examination:

Mr. Rowland one of the parties who was present when the railroad transaction occurred, he is not able to come to court. Mr. S— was at his home, I don't know why he is not here today. He

promised me to be here today. I went by there to make arrangements with him to come. Mr. Rowland was not able to come.

Q. Now something was said about your giving the place back to your father; you never had any place to give him, did you?

A. No sir.

R. A. FLANDERS, being duly sworn, testified:

I am the trustee for this estate, it would not be possible to pay the indebtedness or claims proven against the bankrupt's estate in full without this property that is now being sued for. I cannot tell exactly how much the assets of the estate will realize, but something little above $2000.00. I do not think it will go over $3000.00. I have administered the assets of the estate, except the property we are suing for, this matter that is to be determined.

49 The rent note dated December 11th, 1913, due October 1st, 1915, above referred to, also rent note of same date and due October 1st, 1916, each for $1,000.00 and both payable to M. C. Coleman landlord or bearer were duly offered in evidence.

Executions in favor of Baltimore Bargain House for $1,103.74, one in favor of Hutchinson Shoe Co., for $33.15 with entry of levy dated December 9th, 1914, were introduced in evidence, all being against M. C. Coleman.

Also fi. fa. of Farquhar Machinery Co., against M. C. Coleman $297.30 with entry of levy of Sheriff under date Dec. 4th, 1914, also fi. fa. against M. C. Coleman, $116.75.

At this point Mr. Saffold requested an adjournment until March 12th (tomorrow) on account of the physical condition of E. J. Coleman, the defendant who he stated he desired to examine. The hearing proceeded March 12th, 1917, at 10 A. M.

R. A. FLANDERS, witness for complainant recalled, on cross examination testified.

I sold the 50 acres out of this same tract, adjoining this tract, belonging to M. C. Coleman, at public sale, it brought $400.00. About $8.00 per acre. It was sold after due and proper advertisement before the public sale. Brought $8.00 per acre. I have never examined the character of the land of the 50 acres, and the land in dispute, from that stand point of character. There is no building on the 50 acres of land. It seems to be 50 acres there that would be totally isolated from anybody except Mr. E. J. Coleman, and the property sued for in this case. It adjoins other lands than his? It wasn't so that you could not go into and out of it without going through other lands?

A. I am not quite sure about that, but my understanding is that it is completely surrounded by other lands. It is not completely surrounded by this land in dispute. It is all right there in this one body. I really never have looked at the land from the standpoint of its character as to productiveness. I would think all about an average. The rental value of the 35 acres is worth per acre, the same as the rest of the property if it had an equal share of the buildings

50 it would be. Yes, leaving out the buildings for farming purposes, worth as much as the other farming lands. Of course you have got to have buildings on any land to run it. If you have no buildings on the land, and they have got to rent buildings, it would be worth less per acre than the rest of the property in dispute.

Redirect examination:

I think this 50 acres would be more valuable to the person who is owner of this tract of land we are suing for as being a part, lumped in as a part of this land, with the improvements on the land we are suing for, than if it was disconnected from this land and sold separately. E. J. Coleman, bought the 50 acres. If it had the character of houses on it that this land we are suing for has on it, it is worth $25.00 or $30.00 per acre, if it had buildings on it in proportion to what would be required to make it a farm.

E. J. COLEMAN, the defendant testified:

This piece of land in dispute was never given to my son. He had the use of it. When the boy was young, married, he went over to this old farm. I sent him over there. The farm wasn't doing much, and he lived there for I don't know how long. I forget the days and the length of time. But he lived there three or four years, and was clearing this piece of new land, clearing up some new land and I thought I would give it to him, intended to do it, went over there and surveyed the land out and done it all in good faith and kept thinking about it, that I didn't see how I could equalize the thing with my children, and went back to him, and pretty soon, about the first time I reckon, that he was back at my place, after surveying it, I told him that I could not satisfy myself to do that, that I would not make a deed to this property. I says, "Now I will sell it to you at the price the land is going at, and you can give me a note, and if you never pay it, it will stand and bear interest, and that will put you on an equality with my other children. He never did give me any note, neglected to do it, and the thing died out from then until now, and it has lay there that way ever since. And he went on and kept drawing money out of me, loans, and improving the land, and not a thing said in the family about it, and that he was getting more than anybody else. I have remarked time and again that he was improving of my property, doing as much good as it was him, and I
51 thought the money well spent.

As far as I know, all during his possession over there he has recognized my ownership, and title and dominion over that land, always. I never saw an act from the boy in my life exercising any privileges like it was his'n Never have seen any sign of it in my life—no talk, no acts that I ever heard him doing. It always went by his place. Well, a negro that rents crops from me, that is his place. I never paid any attention to such as that. I have paid the taxes on this property, ever- time it has been paid, and if he ever paid any taxes on it, I don't know, nor I never have known—never saw a thing, nothing to indicate it.

Q. Well, now Mr. Coleman, this 50 acres that they say 35 acres cleared on, that you bought at this sale from Mr. Flanders, as trustee, what is the character or class of that land for farming purposes, relative to the rest of this place?

A. Well, now I cannot answer that question very well, because I never was on that land but once in my life that I know of. Before it was sold I wanted to take that up and went over there to look at it. see what it was. I didn't want somebody else to go and cut it off in that form—no cross fence or nothing between it. The part that I went on is as good as any land in the field, but back outside of the creek—I could not walk over there. I did not go back—just went in the field, on a ridge and looked at the surroundings.

Of the 50 acre tract, well some of it is not cleared; I think somebody said here baout 30 or 35 acres that was cleared. They know more about it than anybody, but there was a big cleared place, anyhow.

Q. Well, is that place, that piece that you were on, that cleared and suitable for cultivation?

A. Yes sir.

That land in comparison with the cleared land on the other tract, I think it is fully as good. That 35 acres is worth a year for a farm just as much as the other, just about the same class; the rental I would suppose was worth about the same.

Q. Well, you refer to these rent notes over this place; how did you receive them?

A. He sent them notes to me by another little boy, by this other boy now that is living over there at that other place, named
52 Lige. How I came to receive those notes and collect them, well, the boy owed me so much that when I received them I was pretty glad to get hold of them. I thought I would get that much maybe, but you understand, he never mentioned it to me, what to do with them, nor narry thing about it. He just told the boy to get those notes. Well, I allowed that he gave them to me to get something justly due me.

When I got them, I considered them mine, because it was given for stuff that belonged to me.

Q. Now, Mr. Coleman, is there anything else you want to state about this matter? That is all I think of to ask you. You can do it now? No answer.

Cross-examination:

I swore to the answer I filed in this case, and swore that at the time that my son sent me the four notes, that I was not advised of my son's condition. I did not know anything about his financial condition, never heard of it. If I did, why I do not remember. I knew they kept suing him and levying on his stuff, I knew that very well. I knew that at the time I took the notes.

Q. And at the time you got the notes you were very glad to get them because you judged that he intended that you should take those notes so as to pay you money that he owed you?

A. I allowed he thought I would save them. Right along that line that I would get them as a creditor of my son and realize on those notes for the amount of money that he owed me. I cannot tell how much he owed me. I have not got any check that I ever issued, showing payment of money to him, not a thing in the world. I was examined before the Referee about this transaction between me and my son. I don't remember being questioned particularly about any checks to show that money that I let my son have. I haven't looked for the checks. I doubt if I would have them if I ever paid him money by checks. I do not know how much nor the dates. Been owing me all the time. The amounts I let him have from time to time were not given he would come and get $100.00 or $500.00 and I would give him a check for the money, and very often tell him to pay back at a certain time. I did not charge it up against him. Didn't make any entry at all, and haven't looked for those checks, had no cause to look for them. I would not have found them anyway. I knew he was over there, but I do not know about the M. C. Coleman place. I knew that he was taking all the rents from this property from the time he married, 1903, to the time he turned the rent notes over. He took that continuously during that time.

53

Q. Will you please tell the Court what act of dominion you exercised over this land in dispute during those 12 years?

A. I didn't have but mighty little money and give it to the boy, if he could make a living on it, to do it.

When I return my property, I would just make a return of so many acres; never specified in any tax return this particular tract of land, it was included with the other tracts. I cannot tell you how many acres of land I owned in 1902. I had 2000, I think I had 3000, I don't know nothing about that though. I don't remember how many I had. I do not remember how many acres I returned for taxation in them days. It was the custom to make a tax return in Emanuel County, to return so many acres cleared land, that is to say, so many acres cultivated and so many acres wild land. And would not be any way of telling from that tax return what particular lands I intended should be cleared land, and what particular lands should be wild lands. I think all of the land with farms on it is always given in in Emanuel County as improved lands. But nothing would be specified in my returns as to which lands would be included in this lump sum acreage.

Q. So that, if it so happened that in all your returns for taxation during this time you did not return all the acreage that you happened to own, then it is just mere guess work, so far as the records show, as to whether you ever returned this specific land for taxation?

A. Well, it was always included, I always give in that body of land in that place for 1,000 acres. I do not know how many acres I returned for taxation in 1907, 1906, 1910. In 1915 I guess I gave in about 5,600 acres or seven, somewhere along there, I ain't certain.

—. 5,700 acres in 1915?

A. Yes sir.

Q. Is that all the acreage that you owned?

A. That is all I paid taxes on. I suppose that it is all I own. I keep a record of my tax lists, after I give in my taxes, and I take a copy of that and the next year I copy my taxes from that
54 *that*, if I ain't bought any more land. All the lands I own, the deeds are recorded. I reckon every acre of land I own in Emanuel County, deeds were recorded. The tax officials never required me to segregate each particular tract of land in my return. No, I didn't promise to give the land to my son, when I had the survey made, I intended it. I don't remember that talk with the surveyor that the survey was for M. C. Coleman. I might have done that. I might have told him to survey it to go to that boy. I had the intention to give my son that land and he understood that.

Q. And then you testify that afterwards, after the survey was made, that you told your son that that was too much?

A. I do not know that now. I told him—I didn't understand it that way. I told him "I don't see how I can do that; I can't satisfy myself that I had so many children, to give him all that body of land then and leave it there in that shape, that at my death they would all scramble about it, and I would not do it." The date of that conversation that I had was right after the survey that I got from Gillis, I guess Gillis's figures, I am satisfied his figures are about right there, for the survey.

Q. You said your arrangement with him was that he could take that land at what lands were selling for then and give you notes for it, with interest, and then at my death he would be charged with that amount?

A. That was the intention; I don't remember the words. I cannot answer the question "what was the land selling for at that time," now. I don't suppose it was selling at $10. per acre.

Q. You don't think this land was worth more than $10.00 per acre?

A. I tell you what I done; just about the time that survey was made there was a move up to get Jim L. Moore's place—perfectly good place—land is good. I bought 100 acres from that land, right at this time for $2.00 per acre.

I didn't tell you that I cancelled this arrangement with my son because 225 acres at $2.00 per acre was too much to give him. I did not say as much. I did not say that the reason I cancelled the proposed arrangement had with my son was because it was not fair to the other children. I said that I was not satisfied to deed him that piece of land, that I didn't see how I could equalize the other
55 part of the matter with my children.

Q. Couldn't equalize a matter of five or six hundred dollars between him and the other children? What do you mean by that? You say land right by this land was sold at $2.00 per acre, a part of it, a short while before that. Yet in spite of that fact, your son has been up to 1913 putting out money in improving this property?

A. Yes sir.

Q. Mr. Coleman, if your son had never gotten into financial difficulties he would be collecting the rents today, would he not?

A. No, sir, Yes he would not, because he——

Q. If he had never gotten into trouble—if he hadn't this trouble and did not owe you any more, he would have been collecting the rents today?

A. I had made up my mind a good while, a year or two, that I was going on him for the rents, that I would not stand it, that he owed me too much money. I know enough to cover all that.

Q. You haven't got any evidence of the amounts—no record at all?

A. I told you that before—I tore up $3,500 of his notes the winter before this last. I told you that over yonder in that other examination, *the* he had them old notes lying there against him and him helpless to pay. I thought my time was about up, and if I died and left that thing in that shape, that boy would not get nothing, and I tore them notes up winter before last. The notes were dated back in 1903, or '4 or '5. Somewhere along there. They were not barred by the statute of limitations in a family matter like that. I do not know that they were barred when I tore them up, I am no lawyer.

Q. Don't know whether they were barred or not, but anyhow you intended to acquit him?

A. If my health had not been in such shape that it was in, I would not have——

I think I can explain your question "If you could not let your son have this land which you intended to give him because it would not be fair with the other children, will you explain how you cancelled $3,500 of indebtedness against him and still were fair with the other children?" very well. My conscience is clear, anyway. When I cancelled the notes I knowed that he was in debt a way yonder to everybody. I did not know who he did owe or how much; Parties on notes I never knew he owed until yesterday, and then there was $1,000 note I never heard of before. I knew he
56 was indebted to everybody, and if I died winter before last with these notes lying there in my safe against him, that he would not get anything from my estate, and while he had had the benefit of this money, and I did not want—He has like myself got a big house full of children, and I did not want to leave him in mean shape with children.

Q. You were willing to be more fair with one child than the others?

A. I do not know. I would have been that way with any of the balance of them. I intended the right thing, the way I construed it, that that was a good body of land and cutting it off of another tract there, that he might—the rest might think that he got more than they did, and I would leave the matter up to them; and, personally, I think that was right. I have done the very same with all the children now. I ain't made any difference. I have got two more there on the same tract, under the very identical form that this boy went there.

Q. In other words, to keep the rents until your death?

A. Yes sir.

Q. But if they get into trouble with creditors, you would go and take them away?

A. I will sir, just as sure as they get in that shape. I do not know sir, that I think that a fair arrangement.

Q. In other words, theirs to use as an asset, but to be cancelled in the event their creditors come in—may go there and parties may credit them on the assumption that the land belongs to them——

A. I will object to that whenever any one tries for it. Whether I have got a right to it or not—it may not be law; I am no lawyer, but that is the way I feel about it, that the records is there in Emanuel County to show to whom the lands belong. If you advance money it is your business to go and see.

Q. You say in your answer to this bill, that you were not advised of your son's condition. Now, as I understand, you say that you were then advised of the fact that he was being sued and property of his was being levied on?

A. I knowed that I saw it. I take the Forest City Blade, it is our County paper, and they were continuously—been at it for years—advertising some of his property for sale. I knowed he was in debt. He sent these notes to me by a boy, and I never had any conversation with him at all. I never inquired of him as to his financial condition at the time or just before the time I got the notes. I don't know that it was ever mentioned. I never asked him to send
57 the notes, after 12 or 14 years.

Q. Never made any inquiry at all?

A. I said it was not—I don't guess it was ever mentioned. If it was, I don't remember, until we came to Savannah to that hearing a year or so ago. I never made any inquiry as to why he sent the notes, never mentioned it to him, he was right there in the county, he was accessible to me.

Q. And you never bothered to go to see and ask him what he meant by going around and handing over $4,000 of notes?

A. I reckon so. I never went around to ask him what he meant by that. I thought they came home where they belonged.

Q. As a debt owing to you?

A. No, no, right on that line. I would not have liked to give $4,000 for these notes when they came to me, but they proved to be all right—paid every time they came due. I have collected $2,000.00 on them. And I have got the other two notes. M. C. Coleman is my son. He has cleared about every bit of that land. He has built some houses on it, I cannot answer how many now. I never was in but one—two of them houses in my life.

Q. When were you there——?

A. But if you will, let me give you an estimate of the value of them houses?

Q. When were you there in those two houses?

A. Since he give it up to me I was in one of them, and ate dinner in the other house the day that we surveyed that piece of land that Gillis brought up to you. We ate dinner at that other house there that day.

Q. The other house, or one that he built?

A. And since he give it up to me, I went with Dan Davis to look

at its condition. He came to me up town and mentioned—said he wanted something done, and I went over to the house with him from where I was building another house near the place, and went into the house, and looked at it. I think that is all the time I was ever in that house. My son built that house, that I took dinner in at the time of the survey, and he built that after I had first told him to go over there and take this land. You see he settled on the old part of the farm when he first married and went over there, and then he went right across the branch and went to clearing on this new land. He done it some years after. I do not know how long. I paid no attention to the matter in the world.

I haven't proven any claim against my son's estate in the
58 bankrupt court.

Q. Reading from your testimony in regard to money that your son got from you directly—I asked you this question "You didn't give it to him?

A. Well, I didn't consider it giving it to him, but I guess it was all the same thing. He would come and ask for $150.00 or $100. or 4 or 5 hundred." That might have been my answer. That is only reasonable I would answer that way now if it was put up to me.

(Reading:) "Q. Did you take his notes?

A. No sir." Now I asked you this question as to the rent notes, "Why weren't you willing to let him collect these notes and turn the money over to you when he collected them?"

Answer, "I never objected to it. I reckon when he saw the scrape he was getting into he thought he had better secure me that much." That your answer?

A. Well, I guess that was about correct now. I never asked him why he done it. I had no reason for asking it.

It is correct, that I answered, "I didn't know anything, but I imagined he was in bad shape, but I never thought about him going into bankruptcy. I knowed that he was in bad shape. I could see signs a plenty of that, because they were suing him continuously and advertising his stuff to be sold—sometimes selling something. I could hear a little once in a while, he owed Tom, Dick and Harry. You asked me the question, "he paid the taxes all the time in his own name, I answered, No, sir, I haven't the least idea in the world—— You asked me, "you would not undertake to say that he didn't," and I answered "I couldn't say that, because I don't know, but I will swear positively that I paid it every dollar. I returned it for county taxes, and I don't know whether he did or not, if he did I don't know it.

Q. Now, this conversation that you say you had with your children about this property, you say you told them, "well he is making these improvements, but he is improving my property, you never told M. C. Coleman that?

A. No sir, I don't remember that I ever did. You know his children, they will grumble. When a girl gets a dress and the other one don't get any, they will growl about it. Well, that ran along on that order.

Q. Yes, but when you give a daughter a dress and she gets a piece of some fine lace and fixes it up, you don't take it back from her?

A. No sir, I aint got any use for it. If I give him a piece
59 of land and make him a deed to it I don't take it back. If I make a bad trade I—I would not do it if I could. He would not have anything to say about that. I turned over to one of my other children a piece of land consenting for him to live there as long as I live, and then he will come in equally with the others. He has improved that piece of land. I built him a house furnished some wire and mules and horses there to do work clearing up some more land, same body of land. You let him get in debt to you and try to take that land and I will object.

Q. But the place is for his use as long as he does not get into debt?

A. As far as I know now. Some circumstances might come along—might want to sell the property or dispose of it in some other way. If I do I consider that I have got the right to do it at any time, and he would not object. If I would tell him to get another piece of land, got to do something else with that, he would pull up and go and never grumble at all. I don't have an idea that he would say narry word.

You asked me, "Well, now, when your son was in possession of the place you had surveyed off for him, you say you didn't go over there; you didn't keep up with what was going on over there?" Answer. "No sir, there is part of that land I never seen in my life, I don't reckon." A. Part of it I ain't seen yet, I don't know where the lines is. I looked for that survey, the original survey that I have testified about, that Gillis made. I thought I knowed when the call was first made where I could go and get it. I hunted for it more than once. But I am perfectly satisfied that Gillis plat that he brought in here is just about correct. Gillis, I know him; he is a mighty nice man. He don't know nothing crooked; I don't have any idea. I had the survey, and he made it out after we surveyed the land, and sent it to me in the mail, and I put it away in a pigeon hole in the desk. When the call was made, I thought I could go and put my hands on it, but when I went there it was gone. Some of the children I imagine pulled it out and destroyed it. I am satisfied that Gillis's paper is just about correct. I don't know whether the Wrightsville R. R. goes through some of my land not in question in this case or not. I don't know whether it touches my land. I don't reckon it does outside of that tract. I have got some other lands around there, I have got 1000 acres left. I think
60 I can state positively that that railroad did not go through some of my land that adjoins this land in controversy, but I am not sure.

Q. It might go through there?

A. There is another tract of land right below there, but I don't really know where the railroad does go below that farm, I have never been in there. I don't think it touches any other land but this land in dispute. I would not say positively, but I am satisfied

it don't. I have got a place below this one, 100 acres and 90 acres I think. I don't know where it is. I have been down there to locate the line, but never found it, never got any plan.

Redirect:

Q. The question was asked you, if you gave your daughter a dress, would you take it away from her. If you had in fact ever given this piece of land to M. C. Coleman, would you try to take it away from him? I ask you, if you ever gave him this place would you try to take it away from him?

A. Well, if the thing had went on in the shape that it was in, and Math getting further and further in debt to me, I would have been obliged to take it over to get something out of it. If I had given it to him, I could not have done it. I did not give it to him.

Q. Did he know you never gave it to him?

A. He knows I never gave it to him. I did not tell him that I had never given it to him, but I never told him I did give it to him. When I went there and tried to sell it to him, I told him I would not make him a deed to it—— "I cannot do that now—I have studied about it until I have just decided that I cannot equalize the thing with you all, and that I won't do it."

What I meant by not making him a deed, was that if he wanted to he could go there and take the land and work it and make a living, it was all right. It was not to be his. I have heard of no claim that I consented to at all, not my intention. Between 1903 or '4 and that the last two or three years I bought a lot of land, but I cannot tell the dates.

Q. Any increase in the number of acres returned in the last two or three years?

A. I bought 300 acres of land in 1914, I reckon now——. I bought from L. A. Price, bought the Sol Kersey estate. Since 1914, I bought this 50 acres from Flanders. I don't remember any now outside of that. I bought 15 acres the other day, one day
61 last week, I reckon. This particular piece or tract, that is in dispute, has always been given in by me. I suppose my tax returns increased as to acreage in the last few years. When I buy a tract—I buy land very often. Whenever I have a dollar, I put it in land, have always done it.

Q. The question I want you to answer is this; has your number of acres increased because this land has been added to it, or was——

A. No sir, that land has been in my taxes always. My father gave me that land, all except the Moore tract and the Stewart tract, and the Stewart tract was not attached, that is, was not at that time, but I attached it I think after I bought that 50 acres.

Q. Did I represent you at the time Mr. M. C. Coleman went into bankruptcy?

A. Why, I never had a case, Colonel in my life. I told Saussy when I went on the stand over yonder that he ought to be easy with me, as that was the first time I was ever on that stand in my life. I never have been in the courts and you are witness to it; you have

been up there, and you never saw me in the Court House in your life, in any case. You were not employed by me to represent me in this case at the time M. C. Coleman, my son went into bankruptcy, I never thought about this thing. It was before we come down here last year, whenever it was, You all know that you were first employed to represent me in this matter. I had never in my life discussed with you my interest in this piece of land or any other piece of land, because I never had any cause to.

Q. Day or two before we came to Savannah?

A. I was going then—I like to have been to Bradley before I found you, to get him to come down here with me when they were to try it, but I talked to somebody that told me Bradley represented the other side. You never represented me up to this time. You represented John C. Hall, drew up deed to saw mill in the bankruptcy case, but the land belonged to me at the time, and I got you to straighten out the papers and get it through the bankrupt court—all you did for me in court that I know of. I will give the Court the reason for not giving the land to M. C. Coleman. I could not see how I could equalize the matter with my children if I had
62 done that, if I gave him that land and made him title to it. That is the view I took of it. I never thought of this part when we surveyed it, but after surveying it it kept on my mind that it was too much to allow any one, and I talked to my wife about it, that it would not do, that we could not do that; I am satisfied, right in the same identical shape today, with them all. I give him nothing—make him title to nothing, but he takes that land to work and improve is and make a living. I helped the boy over there, I built his house for him and furnished a lot of wire and mules—tried to help him—and I done the same thing with this one.

Q. When you received the rent notes, did you get any part of the 50 acres of land owned by him individually?

A. I owned that all in there when he bought the 50 acres of land. I owned all around there. I wanted it myself and thought he ought to let it alone; but he went and bought it himself, and I didn't have no objection—never said anything, but I wanted the 50 acres of land myself. I cannot tell when he bought the 50 acres, but it was right at the commencement of the thing, you know.

M. C. COLEMAN, recalled by the complainant.

In 1915 before I went into bankruptcy, I owned a 50 acre tract of land; I owned a town lot in Swainsboro, and I owned an equity in the Durden place, the Durden place had 340 acres. That is all the land I owned. All I gave in for taxes, 390 acres.

Witness identifies signature. That is all the land I owned in 1914.

Q. I notice on this statement here that you said you had 650 acres.

A. Well, it should have been 390 acres. I had an equity in 340 acres in the Durden tract and 50 acres on the other place.

Q. But in this credit statement that you made in your handwrit-

ing, you said "Real Estate, 650 acres, at $30.00 per acre, $19,500. That is credit statement you made?

A. Yes sir, let me see that signature (Witness shown paper.) That has United States stamp of Norristown, Jany. 17th, 1914. On the envelope, yes sir. The signature resembles mine, to the best of my knowledge and belief, I suppose it is.

63 The following writing was offered in evidence.

Statement Made to the Credit Clearing House by M. C. Colman, of the Firm of M. C. Coleman, Town of Norristown, Ga., Dated Jan. 15, 1914.

Assets:

Merchandise at present cash value		$2,500.00
Accounts and notes which are good, none.		
Real Estate consisting of land 650 acres at $30.00		$19,500.00
Other assets consisting of mules and machinery		5,000.00
		$26,000.00
Liabilities, owing for merchandise	$250.00	
Owing for borrowed money, to whom, Banks	1760.00	
Mortgage on real estate J. A. Coleman	6200.00	
Other liabilities consisting of notes	1000.00	
	$9100.00	

The above is a full and correct statement of my (our) financial condition and is made to form a basis for credit with the Associate members of the Credit Clearing House, Signed Jany. 15, 1914. By M. C. Coleman, Member of firm.

Envelope stamped with U. S. 2 cent postage stamp, and Post Office stamp on face thereof, Norristown, Ga., Jany. 17, A. M. 1914.

Cross-examination of M. C. Coleman:

I don't remember that I did ever make a statement to obtain credit in which I put down ownership of 600 acres of land, or 690. This writing 650 acres—looks very much like my signature, but I don't remember making that statement. This writing at the top, it all favors my handwriting. All looks like my handwriting. At that date I did not own 650 acres of land.

It was admitted as a fact that M. C. Coleman has not applied for a discharge in bankruptcy, and that the time has expired within which application could be filed.

OTIS COLEMAN, witness for the respondent testified.

64 I have had the use of some land that originally belonged to my father. The conditions and terms under which I got possession were, when I married he gave me a place and told me to go there and stay on it, and of course, when he called for it, it was his. He never gave me any deeds to it, just told me to go there and make a living.

Cross-examination:

E. J. Coleman, is my father, and he is the father of M. C. Coleman. He has 11 children living, and had 11 I think in 1902. I cannot tell you about how many thousand acres of land he owns in Emanuel County. I think three or four thousand acres.

Q. Owned about that many in 1902?

A. Bought some since 1902. I am 33 years old. Married 11 years. I reside in Emanuel County. My father is reputed to be one of the largest land owners in Emanuel County, I guess so, I reckon he is.

AUSTIN P. H. MULLARKY, witness for Complainant, testified.

I occupy a position with D. J. Morrison & Sons Co., a creditor of M. C. Coleman, that creditor is now an unpaid creditor with proven claim in bankrupt-. I was clerk. The firm of D. J. Morrison & Co., extended credit, the credit which is now unpaid, upon the faith and credit of that statement (Referring to the credit statement made by M. C. Coleman hereinbefore in evidence.)

E. J. COLEMAN, respondent re-called, testified.

At the time this 50 acres was sold and I bought it, nothing was said about the rent. I did not collect one of the $1000 notes before that sale. I don't know whether it was before or afterwards, I don't know when that sale was, but I think it was in the latter part of 1914 or 1915, one. I reckon it might have been in 1915, I don't know. I have always expected when it come that I would have to give up the rent of that 50 acres. I always felt that was theirs. But it never has been demanded. I don't think I ever heard rent mentioned on it, only what I have said to you.

Q. I am talking about rent accrued subsequent to adjudication and up to the time of the same.

A. I want to put you on notice, I am not willing to pay rent over what it is worth, but if you will send some parties not interested and estimate it—I will not pay $135.00 until I am made to do it; it is too much. I am except that land was sold in the fall of 1915,

65 but I am not certain. I never tendered any rent to the trustee, I don't think it has ever been mentioned. I did not offer to pay it in my answer to this bill. I think that other party was the one to call for it. He was the boss, and I bought it, and he made out my title. Never was mentioned.

It is agreed that the 50 acres of land owned by M. C. Coleman sold November 9th, 1915, by the trustee and bought in by E. J. Coleman. The rent due is for 1915, one year on 50 acres.

It is also agreed that M. C. Coleman testified in the bankruptcy proceeding that he was 36 years old in 1915.

J. H. ROWLAND, witness for the Respondent, testified:

I know the two Colemans, I do not know the other party. I went to see Mr. Math Coleman dealing with getting a right of way for a railroad through Emanuel County, it was for the Adrian & Lyons Railroad. It was in the early part of 1911 I went to see Mr. Math Coleman. As to what was said while I was at Mr. Math Coleman's I do not recollect it all, but one thing I do remember about it is that we took dinner with Math Coleman and he told us we would have to go and see his father and get his consent. After he made that statement to me I took dinner with him and went to see Mr. Baum Coleman after dinner.

Q. That is E. J. Coleman?

A. I do not know. I only know him as Mr. Baum Coleman. Admitted that he is the same as E. J. Coleman. I think that is all I remember; that we went to Mr. Math Coleman's and took dinner and went to see Mr. Baum Coleman after dinner and took the matter up with him.

Cross-examination:

It was either 1910 or 1911 the early part of 1911 I went to see M. C. Coleman. I did not get a deed to the right of way. We never did get a deed to the right of way. There never was a deed, Mr. Sutton was getting the right of way from Adrian to Lyons and myself and Mr. Sumner were to get the right of way from Adrian to Wrightsville. There seemed to be some difference with Mr.
66 Stanton and Mr. Coleman. Mr. Coleman demanded more money than they would agree to give and Steve Sumner was a relative of Mr. Coleman and he took the matter up with Mr. Sumner and got me to go there with him to see Mr. Coleman relative to this difference. If they ever got the deed, I do not remember. I could not say through what tract of land it was I wanted to go. I do not know anything about whether it was a large tract or a small tract. It was below Gill Spring, as to its size I don't know. I do not remember whether this railroad was ever built across said land of M. C. Coleman's or not. It was never built below Gillis Spring. I understood that the land through which I wanted to put the right of way belonged to M. C. Coleman. We went to see him and he sent us to see his father in reference to it, and we went to see him.

E. J. SUMNER, witness for the respondent testified as follows:

I know the two Mr. Coleman, I do not know the other party to the above stated suit. I went to see Mr. Math Coleman as to getting a right of way for a railroad through Emanuel County, it was for

the Adrian and Lyons Railroad. It was in the early part of 1911. I went to see Mr. Math Coleman. I do not recollect all as to what was said, but one thing I do remember about is that we took dinner with Mr. Math Coleman and he told us we would have to go and see his father and get his consent. We took dinner after that with Math Coleman and went to see his father who is E. J. Coleman. I think that is all I remember, that we went to Mr. Math Coleman and took dinner and went to Mr. Baum (E. J.) Coleman's after dinner and took the matter up with him.

Cross-examination:

I am not positive. It was either 1910 or 1911, the early part of 1911. I did not get a deed to the right or way. No we never did get a deed to the right of way. There never was a deed. Mr. Sutton was getting the right of way from Adrian to Lyons and myself and Mr. Rowland were to get the right of way from Adrian to Wrightsville. There seemed to be some difference with Mr. Stanton and Mr. Coleman. Mr. Coleman demanded more money than they would agree to give and Steve Sumner was a relative of Mr. Cole-
67 man and he took the matter up with me relative to this difference and got Mr. Rowland to go there with me. I do not remember whether they ever got a deed. I do not remember if they ever got it. I could not say through what tract they wanted to go. I do not know anything about whether it was a large tract or a small tract. It was below Gillis Spring. As to its size I do not know.

As a matter of fact, I do not remember whether this railroad was ever built across said land of M. C. Coleman or not. It was never built below Gillis Spring. The right of way was never graded below Gillis Spring. I understood that the land through which I wanted to get the right of way belonged to Mr. M. C. Coleman, we went to see him and he sent us to see his father in reference to it, and we went to see him.

Approved as a summary of the evidence, March 29th, 1918.

BEVERLY D. EVANS, *U. S. Judge.*

Endorsement: Condensed statement of the evidence. Filed in office March 29, 1918. Florence White, Deputy Clerk.

68 In the District Court of the United States for the Southern District of Georgia, Eastern Division.

In Equity.

R. A. FLANDERS, Trustee of M. C. Coleman, Bankrupt,

vs.

E. J. COLEMAN.

BEVERLY D. EVANS, *District Judge:*

This is a suit in equity by the bankrupt's trustee against an adverse claimant to recover a tract of land, and certain notes given by the tenant for the rent of it. The jurisdiction of the court is invoked under sections 60*b*, 67*e* and 70*e* of the bankruptcy act as amended. The general scope of the bill is to the effect that many years prior to the bankruptcy, the father of the bankrupt, who is the defendant, made a parol gift of the land to the bankrupt, who entered into possession of the land, made valuable and permanent improvements thereon on the faith of the gift, and that under the laws of Georgia, the bankrupt became vested with a complete title thereto. About a year prior to the bankruptcy the bankrupt made a parol lease of the premises for five years, taking five notes payable to himself or bearer, maturing annually for the rent of the land. Within four months of the filing of the petition to be adjudicated a bankrupt, the bankrupt, while insolvent, surrendered possession of and control over the land, and delivered four of the rent notes to the defendant (the other having been previously hypothecated to a bank) with intent, as alleged, to hinder, delay and defraud his creditors. The defendant denied that he made any gift of the land as alleged to his son, the bankrupt and averred that the land belonged to him and never belonged to his son, and that his son's possession was permissive and by virtue of his consent that he might have the use of the land, and that the son's possession was his possession, and that the rent notes, although taken in the name of the son or bearer, were his notes. The defendant also pleaded to the jurisdiction of the court.

69 The matter was referred to a master, who filed a report advising a judgment in favor of the trustee for the recovery of the land and of a stated sum collected from two rent notes, and also for the unpaid notes which had not matured. Exceptions are filed to the master's report.

The exception that the order of reference to the master is void under Equity Rule 59 is without merit. The rule does not prohibit a reference of an equity cause to a master. It declares, "Save in matters of account a reference to a master should be the exception, not the rule, and shall be made only upon a showing that some exceptional condition requires it." It is to be presumed that the judge properly exercised his discretion in making the reference, and if either party desired to controvert the propriety of the reference the

proper practice would be to move before the judge for a revocation of the reference. The failure to make such motion is tantamount to acquiescence, and the point can not be initially raised before the master.

The conflict in evidence before the master revolved around the factum of a parol gift. The trustee submitted evidence tending to show circumstances from which a parol gift of the land might be inferred, while that of the defendant was to the point that he had permitted the bankrupt to use the land, and that no gift of it had been made. The evidence further disclosed that the bankrupt made a parol lease of the land for five years, taking five notes, payable to himself or bearer, and that within four months before the filing of the petition he delivered four of the notes to the defendant, having previously used one of them. The bankrupt and the defendant denied that a parol gift of the land had been made, and insisted that the bankrupt's possession was by permission and with the consent of the defendant. Under these circumstances, the question is presented as to the jurisdiction of the District Court to entertain the suit.

The Bankruptcy Act, as amended by the Act of 1910, declares that "Suits by the trustee shall only be brought or prosecuted in the courts where the bankrupt, whose estate is being administered by such trustee, might have brought or prosecuted them if proceedings in bankruptcy had not been instituted, unless by consent of the proposed defendant, except suits for the recovery of property under Section Sixty, sub-division *b*; section Sixty-seven, sub-division *e*; and section Seventy, sub-division *e*." Bankruptcy Act, section 23, sub-division *b*.

Sub-division *b* of section 60 makes provision for the recovery of preferences given by the bankrupt within four months before the filing of the petition in bankruptcy.

Sub-division *e* of section 67 makes provision for setting aside fraudulent conveyances, and the recovery of the property so conveyed at the suit of the trustee.

Sub-division *e* of the section 70 provides that a trustee may avoid any transfer by the bankrupt which any creditor might have avoided, and may recover the property so transferred, or its value, from any person, except a bona fide purchaser for value.

The bankrupt did not create or undertake to create a preference, nor did he execute a conveyance; so that, the record does not bring the transaction within the operation of section 60 *b*, or section 67 *e*.

Section 70 *e* relates to the avoidance of transfers by the bankrupt, voidable at the instance of creditors, and the recovery of the property so transferred or its value. I construe this section to limit actions to cases where the defendant is alleged to claim title, and its consequent advantages, under the bankrupt by virtue of a transfer from him. I do not think that the transaction as disclosed by the evidence, viewed either from the aspect of the trustee or the defendant, shows any transfer by the bankrupt of the land. Evidence favorable to the trustee's contention that the defendant had made a gift of the land to the bankrupt goes no farther than the parties now

eny that a gift ever was made. If there was a gift of the land, the tle still is in the bankrupt, and he has made no transfer of it hich a court of equity may cancel. The trustee's remedy is by suit n the proper State court to recover the land. Bardes v. Hawarden ank, 178 U. S. 524; Harris trustee, v. First National Bank of Mt. Pleasant, 216 U. S. 382; Newcomb v. Biwer, 199 Fed. 529.

1 The rent notes represent the mesne profits or issues of the land, and their ownership and right of possession to same, nder the facts, would follow the ownership of the land.

With respect to the rent notes, this feature, not disclosed by the leadings, appears in the evidence. The notes were given for a body f land, which included a small tract of 50 acres, which belonged to he bankrupt. This 50 acre tract went into the possession of the rustee, and there is no contest over its ownership. The defendant makes no claim to so much of the rent notes as equitably represents the rent of the 50 acre tract, and offers to account for same. Under the special facts of the case, I think that upon the defendant's accounting for the rent of the 50 acre tract, the action should be dismissed without prejudice to the right of the trustee to institute a suit in the State court to recover the land and mesne profits. According-, if the trustee and the defendant can agree on the amount, upon the payment of the same, the action will be dismissed in this court without prejudice. If payment be not made, then so much of the action as relates to the recovery of the notes be retained, so as to permit a recovery of the amount of rent of the 50 acre tract. Let an order be prepared to this effect. This March 15th, 1918.

BEVERLY D. EVANS, *Judge.*

Endorsement: Opinion of the Court. Filed in office March 16, 1918. J. C. Morcock, Deputy Clerk.

72 In the District Court of the United States for the Southern District of Georgia, Eastern Division.

R. A. FLANDERS, as Trustee of M. C. Coleman, Bankrupt,

v.

E. J. COLEMAN.

Final Decree.

This court having considered the report of the special master in this cause, and having heretofore filed opinion in this cause, and the said cause, appearing to be one in which this court has no jurisdiction of the subject matter, assuming for the purpose of the consideration of such question of jurisdiction, the testimony submitted by the complainant to be true, this court without a decision on the merits of the controversy, herewith orders and directs that the said bill of complaint be and the same is hereby dismissed, without prejudice to the complainant's right to maintain his action in the State

court. The report of the master in this cause finding in favor of the complainant on the question of jurisdiction, and on the merits, is hereby overruled because of the fact that this court is without jurisdiction of the subject matter of said controversy.

The compensation of the special master will be fixed hereafter, and it is ordered that complainant pay the costs.

In open Court this 25th day of March, A. D., 1918.

BEVERLY D. EVANS,
United States Judge.

Endorsement: Final Decree. Filed in office March 25th, 1918. J. C. Morcock, Deputy Clerk.

73 In the U. S. District Court, Southern District of Georgia, Eastern Division.

R. A. FLANDERS, Trustee of M. C. Coleman,

vs.

E. J. COLEMAN.

We agree that the master's report be eliminated from the appeal papers in this case. That the said report of the Master found in favor of the complainant, on the facts, and that complainant should have the relief prayed for, and accounting. And that he also found in favor of the jurisdiction of the Court. The respondent duly excepted to the said report on all grounds of findings of the master. That the said exceptions be not made a part of the appeal papers.

This 25th day of March, A. D., 1918.

F. T. SAUSSY,
Counsel for Complainant.
F. H. SAFFOLD,
Counsel for Respondent.

Endorsement: Stipulation as to Master's report and exceptions thereto on appeal. Filed in office March 29th, 1918. Florence White, Deputy Clerk.

74 In the United States District Court, Southern District of Georgia, Eastern Division.

R. A. FLANDERS, Trustee of M. C. Coleman, Bankrupt,

vs.

E. J. COLEMAN.

To Frank H. Saffold, Esq., Counsel for E. J. Coleman, Respondent:

You are hereby notified that the above named R. A. Flanders as trustee of M. C. Coleman bankrupt, intends to appeal to the Supreme Court of the United States, from the final decree in said cause ren-

dered on the 25th day of March, A. D. 1918, such appeal to be made in open court during the present February Term of said Court, or within the time allowed by law.

March 26th, A. D. 1918.

WILLIAMS & BRADLEY,
SAUSSY & SAUSSY,
Counsel for Complainant.

Service of above notice acknowledged, copy received. Citation on appeal waived.

F. H. SAFFOLD,
Counsel for E. J. Coleman, Respondent.

P. O. Swainsboro, Ga.

Endorsement: Notice of intention to appeal. Filed in office March 29th, 1918. Florence White, Deputy Clerk.

75 In the United States District Court, Southern District of Georgia, Eastern Division.

In Equity.

R. A. FLANDERS, as Trustee in Bankruptcy of M. C. Coleman, Bankrupt,

vs.

E. J. COLEMAN.

R. A. Flanders, as trustee in bankruptcy of M. C. Coleman, bankrupt, conceiving himself aggrieved by the final decree made and entered in the above entitled cause on the 25th day of March, 1918, does hereby appeal from the said final order, judgment and decree of the said District Court of the United States for the Southern District of Georgia to the Supreme Court of the United States, for the reasons specified in the assignment of errors filed herewith and prays that this, his appeal may be allowed, and that a transcript of the record, proceedings and papers upon which the said final judgment, order and decree was made which dismissed the said cause for want of jurisdiction, duly authenticated may be sent to the Supreme Court of the United States.

Dated the 29th day of March, A. D. 1918.

FREDERICK T. SAUSSY,
SAUSSY & SAUSSY,
A. S. BRADLEY,
Counsel for R. A. Flanders, as Trustee of M. C. Coleman, Bankrupt.

The foregoing claim of appeal to the Supreme Court of the United States is allowed; in open court, and at and during the term in which the final decree appealed from was rendered.

It is further ordered that the evidence and such portions of the transcript as are specified in the Præcipe of the appellant in this cause be sent to the Supreme Court of the United States, under the seal of this Court by the Clerk of this Court, and as this appeal is made by a Trustee in Bankruptcy, it is ordered that he shall not be required to give bond on such appeal.

Dated at Savannah, Georgia, this 29th day of March, 1918. In open Court.

BEVERLY D. EVANS,
United States District Judge for the Southern District of Georgia.

76 Endorsement: Appeal to Supreme Court of United States and allowance thereof. Filed in office March 29th, 1918. Florence White, Deputy Clerk.

77 UNITED STATES OF AMERICA,
Southern District of Georgia:

The President of the United States of America to E. J. Coleman, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at the City of Washington, within thirty days from the date of this writ, pursuant to an appeal duly allowed by the District Court of the United States for the Southern District of Georgia, and filed in the Clerk's office of the said District Court on the 29th day of March, 1918, in a cause, in which R. A. Flanders as trustee of M. C. Coleman is appellant, and you E. J. Coleman are appellee, to show cause, if any, why the decree, order and judgment rendered against the said appellant, and in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States of America, this the 29th day of March, A. D. 1918.

BEVERLY D. EVANS,
Judge of the United States District Court, Southern District of Georgia.

Due and legal service of the within citation is hereby acknowledged and admitted, this 29th day of March, A. D. 1918, citation waived.

F. H. SAFFOLD,
Attorney E. J. Coleman, Respondent.

Endorsement: Citation on Appeal. Filed in office March 29, 1918. Florence White, Deputy Clerk.

78 Pending in the United States Supreme Court, October Term, 1917.

R. A. FLANDERS, as Trustee in Bankruptcy of M. C. Coleman,

vs.

E. J. COLEMAN.

Waiver of Citation on Appeal.

E. J. Coleman, the appellee in the above entitled cause, does hereby formally waive citation on appeal to the Supreme Court of the United States, in the above stated cause.

F. H. SAFFOLD,
Counsel for E. J. Coleman.

This 1st day of April, A. D. 1918.

Endorsement: Waiver of Citation on Appeal, filed in office April 3rd, 1918. Florence White, Deputy Clerk.

79 In the United States District Court, Southern District of Georgia, Eastern Division.

R. A. FLANDERS, Trustee of M. C. Coleman, Bankrupt,

vs.

E. J. COLEMAN.

R. A. Flanders, Trustee of M. C. Coleman, Bankrupt, the appellant herein prays an appeal from the final decree of this Court to the Supreme Court of the United States, and in connection with his petition for appeal herein, presents and files herewith his assignments of errors, as to which matters and things he says that the decree entered herein on the 25th day of March, 1918, is erroneous:

First.

That the decree dismissing the said cause of the plaintiff for want of jurisdiction is erroneous, for the Court has jurisdiction to entertain this action, under Sections 60 (*b*), 67 (*e*) and 70 (*e*), of the laws of Congress relating to bankruptcy.

Second.

That the decree dismissing said cause of the plaintiff for want of jurisdiction, is erroneous, for the Court has jurisdiction to grant the relief prayed by the appellant.

Third.

That the decree dismissing the said cause of the plaintiff for want of jurisdiction is erroneous, for the evidence of the plaintiff showed

that in January or February, 1915, or at least within two months prior to May the 8th, 1915, the bankrupt, M. C. Coleman, then owning the land in dispute, made a transfer not only of the said land, but of the rents and profits thereof, then belonging to him, to the respondent, with intent to hinder, delay and defraud his creditors, the said bankrupt being then insolvent, and having been insolvent within the meaning and intent of the laws of Congress relating to bankruptcy since August, 1914, and the effect of such acts and conduct of the bankrupt, and the respondent was and is to hinder delay and defraud the creditors of said bankrupt.

Fourth.

That the decree dismissing the said cause of the plaintiff for want of jurisdiction is erroneous for the bankrupt, M. C. Coleman,
80 and the respondent, E. J. Coleman, by their acts and conduct, during the month of January or February, 1915, and at least within two months prior to and immediately preceeding May the 8th, 1915, the date when the bankrupt, M. C. Coleman, filed his voluntary petition in bankruptcy, did acts, in relation to the land in dispute, which in law amount to a transfer of property and the possession of property of said M. C. Coleman by the said M. C. Coleman, while he, the said M. C. Coleman was insolvent within the intent and meaning of the laws of Congress relating to bankruptcy, to the said E. J. Coleman, with intent to hinder, delay and defraud the creditors of M. C. Coleman, namely, by transferring the rent notes and lease for the remaining four years, covering the real estate in dispute, to the said E. J. Coleman, and the assumption by E. J. Coleman of a proprietary claim to the said real estate, and to the rent notes and leasehold thereof; by virtue of such acts of said Bankrupt, and the taking possession of the said real estate by E. J. Coleman under such transfer of the said M. C. Coleman, and the improvements of the said real estate made by the said E. J. Coleman after such transfer, and by the fraudulent disclaimer by the bankrupt then and there to the said E. J. Coleman of any right, title, interest or claim in and to the said Property, and to the possession of such property the said leasehold then held by him, and to the rents and profits thereof, and by passing the possession of the said real estate from said M. C. Coleman to the respondent, E. J. Coleman, with such intent and purpose on the part of the said M. C. Coleman, to hinder, delay and defraud his creditors.

Fifth.

That the decree dismissing the case for want of jurisdiction of the court is erroneous, for the said District Court of the United States, for the Southern District of Georgia, has jurisdiction to entertain the cause of the complainant against the respondent and to grant full and complete relief, and require restitution to be made of the possession of the property in dispute, and an accounting for

the rents, issues and profits thereof, and for such other general relief as the complainant prays for in his bill.

81 Sixth.

The Court erred in dismissing the said bill of complaint for want of jurisdiction, because under the uncontradicted evidence in the said cause, the bankrupt, M. C. Coleman, in January or February, 1915, or at least within two months prior to May 8th, 1915, the date when he filed petition in bankruptcy, transferred to E. J. Coleman, property, to-wit: The leasehold then and there held by the said M. C. Coleman under a rental contract made by M. C. Coleman with Dan Davis, his tenant, amounting *in* the sum of $4,000.00 in value, and which the said E. J. Coleman then and there accepted, assumed control of, and thereafter collected such rents by virtue of being the holder of such rent notes, and thereafter *has* the said tenant, Dan Davis, to attorn to him the said E. J. Coleman, and thereafter and prior to filing of the bill in this cause, took charge of and possession of the said premises, claiming to be proprietary owner thereof.

Wherefore, for these errors, petitioner and appellant prays that the judgment and decree of this Court in this case be reviewed and reversed, solely on the ground of jurisdiction and that alone, and the cause be remanded to the effect that the Court consider, pass upon and adjudge the said cause on the merits thereof.

F. T. SAUSSY,
WILLIAMS & BRADLEY,
Attorneys at Law for R. A. Flanders, Trustee in Bankruptcy of M. C. Coleman, Bankrupt.

Presented this 29th day of March, 1918.
BEVERLY D. EVANS,
United States Judge.

Endorsement: Assignment of errors on appeal. Filed in office March 29, 1918. Florence White, Deputy Clerk.

82 In the United States District Court, Southern District of Georgia, Eastern Division.

In Equity.

R. A. FLANDERS, as Trustee of M. C. Coleman, Bankrupt,

vs.

E. J. COLEMAN.

Certificate as to Jurisdictional Question.

In the above cause, I do certify that the decree of dismissal herein is based solely upon the ground that the Court is of opinion that

the Court has no jurisdiction to grant any relief to the complainant; In reaching this determination I have considered the evidence solely to determine whether jurisdiction of the subject matter of the controversy exists in this court, and the evidence of the complainant (assuming it to be true for that purpose only), does not show such a transfer within the meaning of the laws of Congress relating to Bankruptcy, and to the United States Court's jurisdiction in the matter of Plenary proceedings by the trustee in bankruptcy to recover or reclaim property of the bankrupt transferred.

This certificate is made in conformity with the act of Congress of March 3rd, 1891, so that the same may be certified and sent up as a part of the record and proceedings, in said cause.

Dated the 25th day of March, A. D. 1918.

BEVERLY D. EVANS,
United States District Judge for the Southern District of Georgia.

Endorsement: Judge's certificate as to Jurisdictional question. Filed in office March 25, 1918. J. C. Morcock, Deputy Clerk.

83 In the United States District Court, Southern District of Georgia, Eastern Division.

In Equity.

R. A. FLANDERS, Trustee of M. C. Coleman, Bankrupt,

vs.

E. J. COLEMAN.

Præcipe Indicating Portions of Record to be Included in the Transcript on Appeal.

The Complainant herewith specifies the following portions of the record to be incorporated in the transcript on appeal in the above cause to the Supreme Court of the United States:

1. The original bill of complaint of the complainant.
2. The amendment to the original bill of complaint filed and allowed December 6th, 1916.
3. The answer and plea to jurisdiction of the respondent filed December 2nd, 1916.
4. The summary, and condensed statement of the testimony.
5. The opinion of the Court.
6. The final decree.
7. The stipulation of counsel as to parts of Master's report to be sent as a part of the record.
8. All appeal papers, including petition for appeal, and order thereon, citation on appeal and service thereof, assignments of errors filed with petition for appeal, and all other appeal papers.

SAUSSY & SAUSSY,
WILLIAMS & BRADLEY,
Attorneys for Complainant.

Service acknowledged, copy received. Notice of intention to appeal to Supreme Court of the United States received. Citation on appeal waived. This 29th day of March, 1918.

F. H. SAFFOLD,
Counsel for E. J. Coleman, Respondent.

Approved and ordered that the Clerk transmit the above record to Supreme Court.

BEVERLY D. EVANS,
U. S. Judge.

Endorsement: Præcipe for Record on appeal. Filed in office March 30th, 1918. J. C. Morcock, Deputy Clerk.

84 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
Southern District of Georgia:

I, L. M. Erwin, Clerk of the United States District Court for the Southern District of Georgia, do hereby certify that the foregoing writing annexed to this certificate is a true, correct and complete transcript of the record as directed by Law to be made, and copies of the proofs of such entries and papers on file as may be necessary in the hearing in the Appeal in the Equity Cause of R. A. Flanders as trustee of M. C. Coleman, Appellant, versus E. J. Coleman, Appellee, lately pending in said Court and appealed by R. A. Flanders, Trustee to the Supreme Court of the United States, as the same remains of file and record in my office.

In witness whereof, I have hereunto set my hand, and affixed the seal of said District Court, at Savannah, Georgia, this seventeenth day of April, A. D., 1918.

[Seal U. S. District Court, Southern District Georgia.]

L. M. ERWIN, *Clerk,*
By J. C. MORCOCK, *Deputy.*

85 UNITED STATES OF AMERICA,
Southern District of Georgia:

The President of the United States of America to E. J. Coleman, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at the City of Washington, within thirty days from the date of this writ, pursuant to an appeal duly allowed by the District Court of the United States for the Southern District of Georgia, and filed in the Clerk's office of the said District Court on the 29th day of March 1918, in a cause, in which R. A.

Flanders as trustee of M. C. Coleman is appellant, and you, E. J. Coleman are appellee, to show cause, if any, why the decree, order and judgment rendered against the said appellant, and in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States of America, this the 29 day of March, A. D. 1918.

BEVERLY D. EVANS,
Judge of the United States District Court, Southern District of Georgia.

Due and legal service of the within citation is hereby acknowledged and admitted, this 29 day of March A. D. 1918, citation waived.

F. H. SAFFOLD,
Att'y E. J. Coleman, Respondent.

86 [Endorsed:] No. 43. Eq. United States Dist. Court Southern Dist. Ga. R. A. Flanders, Trustee of M. C. Coleman, Bankrupt, v. E. J. Coleman. (10.) Citation on Appeal. Saussy & Saussy, Attorneys and Counsellors at Law, Office and P. O. Address, Savannah, Georgia. Filed in Office Mar. 29, 1918, Florence White, Deputy Clerk.

Endorsed on cover: File No. 26451. S. Georgia D. C. U. S. Term No. 984. R. A. Flanders, as Trustee of M. C. Coleman, Appellant, vs. E. J. Coleman. Filed April 19th, 1918. File No. 26451.